

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

PRESENT:-

Thiru. M.Chandrasekar

.... Chairman

and

Thiru. K.Venkatasamy

.... Member (Legal)

M.P.No. 20 of 2020

M/s.TamilNadu Spinning Mills Association
#2, Karur Road, Modern Nagar
Dindigul – 624 001
Rep. by its Chief Advisor
Dr.K.Venkatachalam

....Petitioner
(ThiruR.S.Pandiyaraj
Advocate for the Petitioner)

Vs

The Chief Financial Controller / Revenue,
Tamil Nadu Generation and Distribution
Corporation Limited
7th floor, 144, Anna salai,
Chennai – 600 002.

....Respondent
(Thiru. M. Gopinathan,
Standing Counsel for TANGEDCO)

Dates of hearing : 04-08-2020, 08-09-2020, 22-09-2020,
06-10-2020, 20-10-2020, 27-10-2020,
10-11-2020, 24-11-2020, 15-12-2020,
29-12-2020, 19-01-2021, 02-02-2021,
23-02-2021, 02-03-2021,23-03-2021,
20-04-2021,22-06-2021, 06-07-2021,
20-07-2021, 10-08-2021, 24-08-2021,
14-09-2021, 28-09-2021, 12-10-2021,
16-11-2021, 30-11-2021, 07-12-2021,
28-12-2021, 19-01-2022, and 01-02-2021

Date of order: 22-03-2022

The M.P. 20 of 2020 came up for hearing on 01-02-2022. The Commission, upon perusal of the petition and connected records and after hearing the submissions of the petitioner(TANGEDCO) hereby makes the following order:-

ORDER

1. Prayer of the Petitioner in M.P No. 20 of 2020:-

The petitioner has prayed in this petition to punish the Respondent / Contemnor, for having violated the order of this Commission passed in Order No. 2-5 dated 11.10.2008, in so far as the matter of collection of Scheduling and System Operation Charges are concerned and for also having violated the Regulatory Provisions, as available under Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004, in the matter of review of the adequacy of Security Deposit for 2020-21 and also for having violated the order of the Commission, in not crediting the interest to consumers and intimating the fact to consumers, as ordered by this Commission in Order No.1 of 2020 dated 17.02.2020 and pass such other suitable and necessary orders, as required to be passed under Section 142 read with Section 146 of the Electricity Act 2003, against the Respondent / Contemnor.

2. Facts of the case:-

The petitioner has filed Contempt petition against the Chief Financial Controller / Revenue of Tamil Nadu Generation and Distribution Corporation Limited for the non-compliance of two issues viz., (1) An instruction issued by the CFC/Revenue vide Memo.No.CFC/FC/DFC/AO.HT/AS.3/Rev/D.No.290-1/2016 Dated 03-10-2016 is contended by the petitioner which is contrary to the order of the Commission's Order

No.2-5 dated 11-10-2008 resulting the collection of Scheduling and System Operation charges on individual WEG wise instead of HT SC No. wise; (2) the Review of Adequacy of Security Deposit for the year 2020-21 was not carried out as stipulated under the TNE Supply Code 2004 Regulation 5(5)(i); and the amount of interest was not credited into the SD account of the consumer to adjust the surplus SD in the HT bills of the consumers during April to June 2020. The petitioner also contended that the interest for the period from 1.4.2020 to 30.6.2020 to be paid to all the consumers. The petitioner prayed to initiate contempt proceedings under Section 142 read with section 146 of the Electricity Act 2003 against the Respondent on the said non-compliance of the two issues stated above.

3. Contentions of the Petitioner:-

3.1. The petitioner has stated that the members of the Petitioner, are all HT industries and they have set up their own Wind Energy Generators (WEGs) at feasible locations and are wheeling the wind energy generated from them for their captive use at their respective spinning mills by paying the open access charges as fixed by the Commission from time to time through the respective Tariff Orders. Because of the same, the members of the Petitioner, are having substantial interest in the matter, covered by the instant Contempt Petition.

3.2. Further, the members of the Petitioner are having sufficient amount of Security Deposit, kept with the Respondent TANGEDCO, as per the requirements under Regulation 35 of Tamil Nadu Electricity Distribution Code 2004 and the adequacy of such Security Deposit, would be reviewed by the Respondent TANGEDCO, after crediting the interest accrued, for a financial year, during the commencement of the

next financial year (ie) during the months of April / May, as per the Regulatory Provisions, contained in Regulation 5(5)(i) of the Tamil Nadu Electricity Supply Code 2004.

3.3. For the purpose of instant reference, the operative portion of the Regulation is extracted below:

"5(5)(i) Additional Security Deposit:-

The adequacy of Security Deposit may be reviewed and re-fixed once in a year in case of HT consumers and once in every two years in case of LT consumers taking in to account the interest due for credit. Such reviews shall be made in the month of April / May. The rate of interest on the Security Deposit shall be on the basis of the Commission 's directive to the licensees in this regard."

3.4. The petitioner has stated that the present Contempt Petition has been necessitated, for filing before this Commission, due to the complete inaction of the Respondent / Contemnor, namely Smt. V. Savitha, who is now functioning as Chief Financial Controller-Revenue and who is obligated for the compliance of the relevant law, as contained under various provisions of the Electricity Act 2003, the Electricity Rules 2005 and also as per all other provisions, contained in the Regulations, enacted by the Commission, in pursuance of its powers entrusted under Section 50 read with Section 181 of the Electricity Act 2003. In the same context, the said Smt. V.Savitha is obligated to comply with the Statutory Orders of this Commission as and when such orders are issued by the Commission. However, the said Smt. V. Savitha, the Respondent / Contemnor, is in the habit of completely acting against the Regulatory Provisions and orders of this Commission continuously, with utter disregard to the legal obligations to be complied with by her, on her capacity as Chief Financial Controller-

Revenue of TANGEDCO and there are many instances of such violations and non-compliances agitated before the Hon'ble Courts of Law.

3.5. The following are the circumstances, by which the Respondent / Contemnor has committed the said acts of Contempt by non-complying with the orders of this Hon'ble Commission and has issued totally a deviated communication with utter regard to the order of this Commission.

Issue No. 1:

Illegal Collection of Scheduling and System Operation Charges on individual WEG / Machine-wise instead of Wind Fan HTSC No.-wise:

The TNERC by its Order No. 2-5 dated 11.10.2008, has first introduced the levy of collection of the Scheduling and System Operation Charges @ Rs. 300 / service connection of WEGs and the Operative Portion of the Order is as below.

"In respect of long term open access customers of wind energy generators the scheduling and system operation charges for a generation capacity of 1650 KW and above shall be Rupees three hundred per day. For generation capacity of less than 1650 KW the charges shall be in proportion to the charges applicable to 1650 KW and above;

This charge shall be levied on the basis of generation capacity per service connection;

This order may be read with the order No.2 dated 15-05-2006;

This order will be deemed to have come into force from 15-05-2006;"

3.6. While the practice of collecting the Scheduling and System Operation Charges, was continuing as such, as per the above order of the Commission, on Wind Fan HTSC No.-wise, the Respondent / Contemnor, with utter disregard to the order of the

Commission, has issued totally a different communication, in Memo. No. CFC/FC/DFC/AO.HT/AS.3/REV/D. NO. 290-1/16, dated 03.10.2016 and directed all the Superintending Engineers, to collect the Scheduling and System Operation Charges, on individual WEG-wise, instead of HTSC No.wise, even without any approval or permission from this Commission.

3.7. In Para 2.1 of the said communication of the Respondent/Contemnor, it has been made as below, in contrary to the orders of the Commission above quoted and the practice of collection of Scheduling and System Operation Charges was unilaterally changed from HTSC No.wise to individual machine-wise, without any permission or approval by the Commission.

3.8. The following is the operative portion of the Memo of the Respondent / Contemnor dated 03.10.2016.

"2. In this connection, all the Superintending Engineers of Distribution Circles are hereby informed as follows:

2.1. The Commission has issued Comprehensive Wind Energy Tariff Order No.3 dated.31.03.2016 wherein the Scheduling System Operation charges has been revised and re-fixed at 40% of the conventionalcharges. Further, in this connection, it is stated that the Hon'ble Commission has fixed Scheduling System Operation charges in the Order No.8 of 2014 dated. 11.12.2014, in respect of the conventional, at the rate of Rs.2000 per day per transaction for long term as well as short term open access customers. Hence, the Scheduling System Operation has to be collected from each WEG machine under

preferential tariff/ REC at rate of Rs.800 per day/Rs. 2000 per day, respectively from the month of 01.04.2016."

3.9. Due to the unilateral instructions issued by the Respondent/Contemnor, even without the approval of the Commission, the Petitioner felt that such an instruction is totally contrary to the order of the Commission and when found that it leads to a blatant violation of the order of the Commission, issued in Order No. 2-5 dated 11.10.2008, made a representation with the Respondent / Contemnor, through its letter dated 07.06.2019, to correct such a false action. Even though, the Petitioner has represented the matter on 07.06.2019 itself, the representation was found not acted upon, in a suitable manner known to law.

3.10. The Petitioner further submits that having seen that no response was found evoked from the Respondent / Contemnor, again the Petitioner reminded the Respondent / Contemnor, vide its reminder sent on 14.10.2019 to issue modified instructions by complying with the order of the Commission dated 11.10.2008 in its letter and spirit. However, even after having received the reminder, the issue was not sorted out and so far, no corrective actions were found taken and no revised instructions have been found issued to collect the Scheduling and System Operation Charges, on Wind Fan HTSC No.-wise and still it is being continued to be collected on each WEG / Machine-wise, causing great concern and unwanted expenses to the wind energy captive users in Tamil Nadu continuously. Therefore, such an in action to comply with the order of the Commission, makes a clear and distinct non-compliance and thereby makes a violation under Section 142 of the Electricity Act 2003, which

reads as follows, leading for a suitable action under Section 146 of the Electricity Act 2003.

"Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

3.11. Accordingly, a Contempt Notice was also sent against the Respondent / Contemnor, through the Counsel of the Petitioner on 02.07.2020, by providing a final opportunity and however, the Respondent / Contemnor has not corrected herself, by issuing any modified instructions in line with the order of the Commission, as per the Order No. 2-5 dated 11.10.2008, to collect the Scheduling and System Operation Charges, on HTSC No-wise, instead of individual WEG-wise.

3.12. Therefore, the Respondent / Contemnor has rendered herself for suitable proceedings under Section 142 of the Electricity Act 2003 and also rendered herself for suitable punishment under Section 146 of the Electricity Act 2003, by willfully violating the order of the Commission dated 11.10.2008, in spite of all opportunities provided to her, to correct the said deviations and violations.

Issue No.2:

3.13.Continuing to default in the matter of Reviewing the Adequacy of Security Deposit for 2020-21, as mandated under Regulation 5(5)(i) of TN Electricity Supply Code 2004, even after the expiry of 3 months period and failing to intimate the consumers about the credit of the interest on the Security Deposit in violation of the order of Hon'ble Commission in Order No.1 of 2020 dated 17.02.2020:

Regulation 5(5)(i) of the Tamil Nadu Electricity Supply Code 2004, mandates as below.

"5(5) (i) Additional Security Deposit:-

The adequacy of Security Deposit may be reviewed and re-fixed once in a year in case of HT consumers and once in every two years in case of LT consumers taking in to account the interest due for credit. Such reviews shall be made in the month of April / May. The rate of interest on the Security Deposit shall be on the basis of the Commission's directive to the licensees in this regard."

3.14. Further, the Commission has issued, inter alia, a direction by way of its Order No. 1 of 2020 dated 17.02.2020, inter-alia as below, in pursuance of the provisions contained under Section 47(4) of Electricity Act 2003 read with Regulation 35 (4) of the Tamil Nadu Electricity Distribution Code 2004, further read with Regulation 5(5)(iii) of the Tamil Nadu Electricity Supply Code 2004.

"3) As per Regulation 5(5) (iii) of the Tamil Nadu Electricity Supply Code, the interest at Bank Rate or more as specified by the Commission shall be calculated and credited to the Security Deposit Accounts of the consumers at the beginning of every financial year and the credit available including the interest shall be informed to each consumer before the end of the year.

6) The credit including interest available in the accounts of the consumers as on 31-03-2020 shall be intimated to the consumers by 30-06-2020."

3.15. After seeing that the concerned Superintending Engineers of the TANGEDCO are not found making any action to review the adequacy of the security deposit till 31.05.2020, as mandated under Regulation 5(5)(i) of Tamil Nadu Electricity Supply

Code 2004, the Petitioner has made a representation to the Respondent / Contemnor on 11.06.2020, to allow to make the reviews on the adequacy of security deposits for 2020-21 immediately. When the members of the Petitioner approached the concerned Superintending Engineers, it was reported by the Superintending Engineers that the Respondent / Contemnor has locked down the entire software and accordingly, the Superintending Engineers were not able to review the adequacy of Security Deposit for 2020-21 as was done in earlier years.

3.16. When the Petitioner found that the Respondent / Contemnor has not acted up on the representation filed by the Petitioner on 11.06.2020, the Petitioner again sent a reminder to the Respondent / Contemnor on 26.06.2020 on the same matter, requesting to allow to review the adequacy of the Security Deposit required for 2020-21. However, the Respondent / Contemnor, has neither complied with the Regulatory Provisions, as mandated under Regulation 5(5)(i) of the Tamil Nadu Electricity Supply Code 2004, nor found complied with the directions of the Commission, as issued in its Order No. 1 of 2020 dated 17.02.2020, by crediting the interest over the Security Deposits held by the consumers and by providing an intimation to consumers before 30.06.2020, to the extent as extracted above.

3.17. Due to the same, the members of the Petitioner's Association, are not able to adjust the excess security deposits, made available at their accounts, against their respective CC bills, for want of proper review of adequacy of security deposit, within the time limits, as mandated by the Regulation.

3.18. Normally, every year, the review of adequacy of Security Deposit would be taken up by the Superintending Engineers concerned, in the month of April itself. But however, during this year, this has not happened, even after the expiry of the first quarter, which has already ended by 30.06.2020. The Commission has already issued the order notifying the rate of interest for the Security Deposit for the year 2019-20, even much earlier by 17.02.2020 itself. However, the workings of interest and crediting it with the available deposits, have not happened in time. This is a complete omission on the part of the Respondent / Contemnor and leads to a gross violation of both the Regulatory Provisions as well as the order of the Commission

3.19. As, all the members of the Petitioner's Association are hard struggling financially, in the recent months, due to the complete lock downs enforced from 25.03.2020 onwards, due to Covid-19 Pandemic Virus spread, adding fuel to the fire, the Respondent / Contemnor, is also not making any attempt to allow the review over the adequacy of the Security Deposit to happen and required for 2020-21. The Respondent / Contemnor is not at all allowing the software to function, to facilitate the credit of interest, as ordered by the Hon'ble Commission. If the adequacy of Security Deposit has been allowed and reviewed as usual by April 2020 itself, after adding the interest accrued, most of the members of the Petitioner's Association, could have adjusted their Excess Security Deposits, against their CC bills for April and May 2020, without much financial hardships. Because of making no reviews to happen on the adequacy of Security Deposit, the members of the Petitioner's Association have lost their interest for the period from 01.04.2020 to 30.06.2020 also, besides to FY 2019-20 and they have experienced very severe financial crunches in managing funds to pay

the CC bills for April / May 2020 and however, they have paid the bills, by arranging funds from other sources, by paying exorbitant interest.

3.20. At these circumstances, the due date for payment of CC bill for June 2020, has also become due now and all the members, having excess Security Deposits have requested the Superintending Engineers concerned, to allow the excessively available Security Deposit for adjustment against their CC bills for June 2020 and however, such requests are not being complied with, for want of instructions from the Respondent / Contemnor. The entire financial management of the members of the Petitioner is made totally crippled by the Respondent / Contemnor, by her indifferent and un-consumer friendly behaviour and also by utter disregard to the Regulatory Provisions and even to the orders and directions of the Commission, to credit the interest and intimate the same to consumers before 30.06.2020.

3.21. The Respondent / Contemnor has not allowed to credit the interest on the deposits held by the consumers and has failed to intimate the same to consumers before 30.06.2020, as ordered by the Commission by its Order No.1 of 2020 dated 17.02.2020 and accordingly, by both the acts of non-compliance of the Regulatory Provisions, as well as, the order of the Commission, the Respondent / Contemnor has rendered herself for suitable stern action under Section 142 of the Electricity Act 2003 and for suitable punishment also, under Section 146 of the Electricity Act 2003.

3.22. Even though, the Petitioner has already issued a Contempt Notice through its Counsel on 02.07.2020 itself, so far no compliance of the Regulatory Provisions, as made available under Regulation 5(5)(i) was seen complied with, by the Respondent /

Contemnor and the Respondent / Contemnor has not even credited the interest for 2019-20 and intimated the facts before 30.06.2020, as ordered by the Commission.

3.23. The Respondent / Contemnor has not only committed the acts of contempt, but is also continuing with the same, with utter disregard to the order of the Commission and also not complying with the Regulatory Provisions as made available in Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004, in the matter of reviewing the adequacy of the Security Deposit for the Financial Year 2020-21, after crediting the interest accrued over the Security Deposits held during the year 2019-20 and failing to intimate the same to the consumers before 30.06.2020.

3.24. Such acts of Contempt, as submitted above are willful and highly motivated. Therefore, the action of the Respondent / Contemnor requires no sympathy in any manner and such continuing contempt has to be dealt with very firmly or otherwise, the consumers and wind energy captive consumers would be put in to serious hardships and irreparable financial losses.

3.25. The Commission may proceed with the matter further, under Section 142 read Section 146 of the Electricity Act 2003, under the Contempt Jurisdiction available to the Commission.

3.26. The Commission may also order and direct the Respondent / Contemnor to refund the entire Scheduling and System Operation Charges, excessively collected from the Wind Energy Captive Users, in pursuance of the illegal and impugned communication issued through her Memo No. CFC/FC/DFC/AO.HT/AS.3 /REV/D. NO.290-1/16, dated 03.10.2016, by way of adjustment in the future CC bills.

3.27. All the consumers in the State were not credited with the interest over their Security Deposit held by them during the year 2019-20 and therefore, it is just and necessary that the Security Deposits should be provided with interest not only for the year 2019-20 but also for the extended period of three months, from 01.04.2020 to 30.06.2020 and accordingly, the Commission may pass an order to this effect, which is legally necessary to protect the interest of all the consumers, without being exploited by the Respondent / Contemnor continuously.

The Petitioner, having no other equal or efficacious remedy has approached the Commission by filing this petition praying for suitable reliefs.

3.28. Accordingly, the Commission may take this Petition on the file of the Commission, under the Contempt Jurisdiction, as available to the Commission under Section 142 of the Electricity Act 2003 for the continuance non-compliance of the orders of the Commission and also on the non-compliance of the Regulatory Provisions as made specifically under Regulation 5(5)(i) of the Tamil Nadu Electricity Supply Code 2004 and accordingly, the Commission may pass suitable interim reliefs and further orders, by punishing the Respondent / Contemnor under Section 146 of the Electricity Act 2003, for the offence of non-compliances committed and also for the offences of continuing the non-compliances, in suitable manner.

3.29. The Commission may pass the following interim orders by,

- A. granting an order of injunction, restraining the Superintending Engineers of the TANGEDCO concerned, from the practice of collecting the Scheduling and System Operation Charges on WEGs, based on the individual WEG-wise, instead of HTSC No.-wise, in consonance with the

order of the Commission passed in Order No. 2-5 dated 11.10.2008 in its letter and spirit and also;

- B. by directing the Respondent / Contemnor, to refund the entire excessively and illegally collected Scheduling and System Operation Charges so far, based on the impugned communication of the Respondent / Contemnor issued in her Memo No. CFC/FC/DFC/AO.HT/ AS.3 /REV ID. NO. 290-1/16, dated 03.10.2016 and to order the excessively collected amounts, by way of adjustment in the future OA charges demands, payable by all WEG captive consumers pending disposal of the Contempt Petition and also;
- C. by directing the Respondent / Contemnor, to allow the locked software again to get reopened, by unlocking the same and thereby allowing the Superintending Engineers concerned, to make the review of the adequacy of the Security Deposit to happen for 2020-21, by crediting the interest both for the full financial year 2019-20 and also for the extended period from 01.04.2020 onwards till the date of such review, within a specified period, pending disposal of the Contempt Petition.

The Commission may punish the Respondent/Contemnor, for having violated the order of the Commission passed in Order No. 2-5 dated 11.10.2008, in so far as the matter of collection of Scheduling and System Operation Charges are concerned and for also having violated the Regulatory Provisions, as available under Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004, in the matter of review of the adequacy of Security Deposit for 2020-21 and also for having violated the order of the Commission, in not crediting the interest to consumers and intimating the fact to consumers, as ordered by the Commission in Order No.1 of 2020 dated 17.02.2020 and pass such

other suitable and necessary orders, as required to be passed under Section 142 read with Section 146 of the Electricity Act 2003, against the Respondent / Contemnor, for having committed the acts of contempt as submitted above and also for continuing the act of contempt, as the Commission may deem fit, in the circumstances stated above and thereby render Justice.

4. Additional affidavit of the Petitioner:-

4.1. The Petitioner has already filed a Petition under Section 142 of the Electricity Act 2003, for taking suitable action on the Non-Compliance of the order of this Hon'ble Commission passed in Order No. 2-5 dated 11.10.2008, in the matter of collection of Scheduling and System Operation Charges and for the Non-Compliance of the Regulatory Provisions as contained in Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004, in the matter of reviewing the adequacy of the Security Deposit for 2020-21 and also in the matter of having not complied with the order of the Hon'ble Commission dated 17.02.2020 in Order No. 1 of 2020, in not communicating the consumers, the quantum of the interest credited over the Security Deposits for 2019-20 before 30.06.2020.

4.2. The said Petition having been filed by the Petitioner, was taken on the files of the Commission in M.P. No. 20 of 2020 and up on hearing the matter on 04.08.2020, the Commission has, inter-alia, ordered to omit the name 'Smt. V. Savitha' as follows:

"Thiru S.P. Parthasarathy, Advocate appeared for the petitioner. Thiru. S. R. Rajagopal, Additional Advocate General for TANGEDCO appeared and vehemently opposed for having included the name of Tmt. V. Savitha, CFC/Revenue in the cause title in her personal capacity and prayed to direct the

petitioner to omit the name of Tmt.V.Savitha and include only Chief Financial Controller / Revenue, TANGEDCO.Arguments of both sides heard and Commission directed to omit the name of Tmt. V.Savitha. The case is adjourned to 08.09.2020 for filing counter on the admissibility of the petition."

4.3. As per the understanding of the Petitioner, normally Contempt Petitions, are being filed only on the name of the person along with his official designation and therefore, in having ordered to omit the name, the Petitioner feels that such a proposition was not considered in the light of the various case laws available from various Courts.

4.4. In the case of R.Muthukrishnanvs The Collector of Tiruvallur, the First Division Bench of the Hon'ble High Court of Judicature at Madras, has ruled as follows, in Contempt Petition No.29554 of 2010 in the order delivered on 20.08.2010.

"10. From the aforesaid provisions, it is manifestly clear that in a petition for initiation of contempt, a person against whom contempt is alleged must be made party respondent in person. The word Persop- means a human being, a natural person and not a juristic person, because a human being can commit contempt of court, and not an authority. It is well settled that a command to a Corporation or to the State or its Authority is, in fact, a command to those persons who are officially responsible for the conduct of its affairs. The person holding the pOst being informed of the order of the Court for compliance or fails to take appropriate action within their power, they are guilty of disobedience and may be punished for contempt.

11. We have given our anxious consideration to the relevant provisions of the Act and the Rules. It is manifestly clear from the Act and Rules, that in a proceeding for contempt, the petitioner must specify the name of the person, who is guilty of contempt by not complying and thereby violating the order of the Court, in his individual capacity or in the discharge of his official duty. In the instant case, for example, if the District Collector alleged to have violated and disobeyed the order of this Court, the petitioner must disclose the name of the person who, while holding the post of the Collector of the District committed contempt by not obeying or complying with the order.

12. We, therefore, hold that the present contempt petition without specifying and disclosing the name and description of the person and without making him as a party respondent for the alleged contempt, is not maintainable. The petition being not in accordance with the Act and the Rules, is, therefore, dismissed."

4.5. From the above extracted portion of the order in the Contempt Petition, the Hon'ble Division Bench, has clearly ruled that contempt petition without specifying and disclosing the name and description of the person and without making him as a party respondent for the alleged contempt, is not maintainable.

4.6. Further, even the Hon'ble APTEL, New Delhi, while dealing with a recent matter, concerning on the conduct of certain officials of the TANGEDCO, has passed strong strictures, in Appeal No.56 of 2020, IA No.112 of 2020, IA No.111 of 2020, IA No.295 of 2020 & IA No.534 of 2020 dated 17.08.2020. In the said order, the names of the officials along with their official designations only, were found included in the cause title of the order. Therefore, the Petitioner is of the humble opinion that a Contempt Petition always needs to be filed, against a designation along with the name of the person, who is holding that post and without which, such petition is not maintainable as per the legal proposition already declared in the matter.

4.7. Therefore, the Petitioner Stated that the order passed by this Commission on 04.08.2020, for ordering to omit the name of 'Smt. V. Savitha', may be reconsidered again, in the light of the proposition of law, as already declared by the Hon'ble Division Bench and also followed in the recent order of the Hon'ble APTEL, New Delhi, to the extent extracted above.

4.8. Therefore, the Petitioner prays that the Commission may be pleased to consider this Petition and order to include the name of 'Smt. V. Savitha' again in the Petition in M.P. No, 20 of 2020 and accordingly, render Justice

5. Contentions of the Respondent:-

5.1. The present petition has been filed on the following alleged issues:

(i) Alleged Non-compliance of the order of the Commission passed in Order No.2 - 5 dated 11.10.2008 in the matter of collection of Scheduling and System Operation Charges.

(ii) Alleged Non-compliance of the Regulatory Provisions as contained in Regulation 5(5)(i) of Tamil Nadu Electricity supply Code, 2004 in the matter of reviewing the adequacy of the Security Deposit for 2020-21 and also in the matter of having not complied with the order of the Commission dated 17.02.2020 in Order No.1 of 2020 in non-communicating the consumers the quantum of interest credited over the Security Deposits for the year 2019-2020.

5.2. With regard to the Issue No.1, I respectfully submit that the respondent TANGEDCO had issued instructions to the EDCs vide circular dt.01.12.2017 in this issue and the relevant portion of the circular is reproduced below:

“xxxxxx
3.11..... *The Scheduling charges shall be collected per Wind Farm HT Service connection.*
xxxxxx”.

The above para in the said memo dated.01.12.2017 has been communicated to the referring various orders of the Hon'ble TNERC including Order.No.3 of 2016, dated.31.03.2016.

5.3. However, the internal audit of the respondent has raised certain objections without noticing the instruction of TANGEDCO in Point 3.11 issued vide circular dt.01.12.2017. Hence, necessary instructions were issued to the EDCs once again by clarifying the earlier circular vide Memo.No. CFC/REV/FC/REV/DFC/AO/REV/D.851/20, dt.09.11.2020 and the relevant portion of the circular is as below:

“ xxxxxxxx

4.0 In view of the instructions already issued vide memo cited under reference 2, the SE/EDCs are clarified to levy and collect the SOC in respect of wind energy generators on “per WEG HT service connection basis” from 01.04.2016 to 10.08.2017 and to refund the excessively collected scheduling and system operation charges, if any, by the way of adjustment in the ensuing bills”

xxxxxxx”

5.4. In view of the above, the Commission's order dt.11.10.2008 has been complied.

5.5. With regard to the 2nd issue, as per Regulation 5 of TNE Supply Code, the review of adequacy of CCD has to be carried out during the month of April every year in the case of HT service connections. However, in view of the COVID-19 outbreak, the Government of Tamil Nadu has initially, announced the complete lock down from 24.03.2020 midnight for 21 days. Subsequently, the lockdown has been extended till 30th April 2020, for which the due dates for the payment of Current Consumption

Charges & other arrear payments payable by the HT consumers to TANGEDCO was extended up to 06.05.2020 without resorting physical disconnection. Further the extension of time for the payment of CC charges and other arrears was permitted to the HT consumers as and when the Govt. of Tamil Nadu orders extending lockdown.

5.6. During the financial year 2020-21, the Security Deposit has to be collected from HT consumers. In view of pandemic, the levy and collection of security deposit was foregone by TANGEDCO by extending time for securing its payments. This has also enabled the HT consumers a relief from such payment. Instructions were not issued to the EDCs to raise demand of security deposit, though the review of adequacy of additional current consumption deposit for the financial year 2019-20 has been completed before 30th of April, 2020.

5.7. Further, in view of the COVID-19 outbreak, lockdown declared by the Government of Tamil Nadu, only limited staff were available during the month of April. In order to avoid putting further burden on the shoulders of electricity consumers, extension of time was granted to consumers. In good faith the demand for Additional Current Consumption Deposit was not raised due to the pandemic situation. Raising of demand and refund runs on the same software. Normalcy restoration and relaxation for various industrial and commercial activities are tabulated below.

Sl No	GO No. and Date	Relaxation given to Industries
1	G.O No 217 dated 03.05.2020	(VI) The following activities will be allowed in all areas falling under the jurisdiction of Greater Chennai Police (Except in containment zones). (i) Functioning of SEZ, EOU and Export Units (except Industrial Estates) after due inspection

		<p>&assessment by Commissioner, GCC/District Collectors with 25% workers (minimum 20persons). Strict access control shall be ensured by the Companies. Employees shall travel only in the vehicles operated by the respective organizations.</p> <p>(ii) IT and IT enabled services with 10% employees (minimum 20 persons). Employees shall travel only in the vehicles operated by the respective organizations.</p> <p>(VII) The following activities will be allowed in all areas across the State, except for areas under the jurisdiction of Greater Chennai Police (Except in containment zones).</p> <p>(i) All industries located outside the Corporations / Municipal Limits (including Textile industries) with 50% workers (minimum 20 persons). All industrial activities shall be allowed in Village and Town Panchayat areas (including Textile industries).</p> <p>(ii) However, in the case of Town Panchayats, where the population is more than 15,000, the District Collector may permit the operation of the textile industries with 50% workers based on the local conditions.</p> <p>(iii) SEZ, EOU, Industrial Estates, Industrial Townships, (including private estates) in Rural and Urban areas will operate with 50% workers. Strict access control shall be ensured by the Companies. Textile industries located in Industrial Estates in Municipalities and Corporations will not be permitted to operate.</p> <p>(iv) Spinning Mills in Village and Town Panchayat areas shall be permitted to function (on shift basis by adopting physical distancing) with 50% workers.</p> <p>(v) The District Collector may permit the operation of Leather and Textile industries in Municipalities and Corporations, dealing with designing and sampling for export purposes, with 30% workers, after assessing the local situation.</p> <p>(vi) The District Collector may permit all export</p>
--	--	---

		<p>units in the urbanareastooperate with 50% workers, based on the local conditions.</p> <p>(vii) IT hardware manufacturing units shall be permitted with50% workers.</p> <p>(viii) IT and IT enabled services with 50% employees (minimum 20 persons).</p>
2	G.O No 262 dated 31.05.2020	<p>3. The following activities will be allowed in all areas falling under the jurisdiction of Greater Chennai Police (Except in containment zones) in addition to the activities already permitted:</p> <p>(I) IT/ITEs are permitted to operate with company provided transport at 20% strength subject to a maximum of 40 persons.</p> <p>(II) All Private offices are allowed to function at 50% strength. However, work from home shall be encouraged to the extentpossible.</p> <p>(III) All showrooms and large format shops (including jewellery and textiles shops) except in shopping malls are permitted to operate with 50% staff strength without air conditioning and limiting the number of customers to five at a time to ensure social distancing.</p> <p>(IV) Restaurants shall be permitted to function with effect from 8.6.2020 with dine-in facilities with 50% of seating capacity maintaining social distancing. Air conditioning shall not be used even if it is available.</p> <p>(V) Tea shops are permitted to function with effect from 8.6.2020 subject to 50 % seating capacity at a time to maintain social distancing.</p> <p>(VI) Tea shops & Restaurants (parcel alone till 7.6.2020), Vegetable shops and Provision shops, are permitted to function from 6:00am to 8:00pm.</p> <p>4. The following activities will be allowed in all areas across the state except for areas under the Jurisdiction of Greater Chennai Police and except in containment zones, in addition to the activities alreadypermitted.</p> <ol style="list-style-type: none"> I. All industries are permitted to operate with 100% of employees. II. IT/ITES are permitted to function at 100% strength with at least 20% to work from home.

		<p>III. All Private offices are allowed to function at 100% strength. However, work from home shall be encouraged to the extent possible.</p> <p>IV. All showrooms and large format shops (including jewellery and textiles shops) except in shopping malls are permitted to operate with 50% staff strength without air conditioning and limiting the number of customers to 5 at time to ensure social distancing.</p>
3	G.O No 324 30.06.2020	<p>2. The following activities will be allowed from early morning 00 hrs of 6,7.2020 in all the areas falling under the jurisdiction of Greater Chennai Police and in the areas of Tiruvallur, Chengalpet, and Kancheepuram District where complete lock down was enforced (Except in containment zones):</p> <p>(i) IT/ITEs are permitted to operate with company provided transport at 50% strength subject to a maximum of 80 persons.</p> <p>(ii) All Private offices, Industries establishments and Export oriented units are allowed to function at 50% strength. However, work from home shall be encouraged to the extent possible.</p> <p>3. The Following activities will be allowed from early morning 00 hrs of 1.7.2020 in all the areas throughout the State except Greater Chennai Police Commissionarate areas and in containment zones and from early morning 00 hrs of 06.07.2020 In Thiruvallur District-Greater Chennai Police Commissionarate areas In Thiruvallur District, Thiruvallur Municipality, Gummindipoondi, Ponneri and Minjur Town Panchayats, all village panchayats in Poovirundhavalli, Eekadu and Sholaveram blocks, In Chengalpattu district - Greater Chennai Police areas In Chengalpattu District, Chengalpattu and Maraimalainagarmunicipallities, Nandhivaram- Guduvanchery Town Panchayat and all Village Panchayats of Kattankulathur Block and Greater Chennai Police Commissionarate areas in Kancheepuram District and Madurai Corporation, Paravai Town Panchayat, all village Panchayats of Madurai East, Madurai West and Thiruparankundram Blocks of Madurai district.</p> <p>(ii) All industries and export oriented units are permitted to operate with 100% of employees.</p> <p>(iii) IT/ITES are permitted to function at 100% strength</p>

		with at least 20% to work from home. (iv) All Private Offices are allowed to function at 100% strength. However, work from home shall be encouraged to the extent possible
--	--	---

5.8. Further in view of the various relaxations announced by the government of Tamil Nadu in lock down, instructions were issued vide Memo.No.CFC/REV/FC/REV/DFC/AAO/JA/ F.ASD Review/ D.400/20, dt.18.07.2020 to the EDCs to complete the ACCD review in respect of HT service connections. Thereby, the Regulation 5(5)(i) of the TNE Supply Code and the order of the Commission dated 17.02.2020 in Order No.1 of 2020 has been complied with, belatedly, due to the outbreak of Covid -19 and consequent lockdowns declared by the Govt. of Tamil Nadu from time to time. The delay cannot be attributable of any willful or wanton conduct.

5.9. The factual position has been set out in previous paragraphs, the reason behind the non-compliance in the matter of review of adequacy of security deposit and non-communication of quantum of interest for the financial year 2019-20 to the HT consumers.

6. Rejoinder filed on behalf of the Petitioner:-

6.1. The Petitioner has filed a Petition under Section 142 of the Electricity Act 2003, for taking suitable action against the Respondent, on the Non-Compliance of the order of the Commission, passed in Order No. 2-5dated 11.10.2008, in the matter of collection of Scheduling and System Operation Charges and also for the Non-Compliance of the Regulatory Provisions as contained in Regulation 5(5)(i) of Tamilnadu Electricity Supply Code 2004, in the matter of reviewing the adequacy of the

Security Deposit for 2020-21 and also in the matter of having not complied with the order of the Commission dated 17.02.2020 in Order No. 1 of 2020, in not crediting the interest over the deposit held by the consumers before 30.06.2020 and having failed in communicating the consumers, the quantum of the interest credited over the Security Deposits for 2019-20 before 30.06.2020.

6.2. At the first instance, the instant Petition was taken on the files of the Commission in M.P. No. 20 of 2020 and upon hearing the matter on 04.08.2020, the Commission has, inter-alia, ordered to omit the name 'Smt. V. Savitha' in the first instance itself without providing any opportunity to the petitioner to defend his case in having included the name of the Respondent in the Contempt Petition.

"Thiru S.P. Parthasarathy, Advocate appeared for the petitioner. Thiru. S.R. Rajagopa/, Additional Advocate General for TANGEDCO appeared and vehemently opposed for having included the name of Tmt. V. Savitha, CFC/Revenue in the cause title in her personal capacity and prayed to direct the petitioner to omit the name of Tmt. V. Savitha and include only Chief Financial Controller / Revenue, TANGEDCO. Arguments of both sides heard and Commission directed to omit the name of Tmt. V. Savitha. The case is adjourned to 08.09.2020 for filing counter on the admissibility of the petition."

6.3. In this connection, as per the understanding of the Petitioner, normally Contempt Petitions, are to be filed always, only by indicating the name of the person, along with the Contemnor's official designation and therefore, in having ordered to omit the name, even without providing any opportunity to the petitioner, by the above order of the Commission dated 04.08.2020, is *prima facie*, not appearing to satisfy the legal proposition already declared by various Courts, in the matter of maintainability of Contempt Petitions.

6.4. Such a proposition was not considered in the light of the various case laws, available from various Courts and accordingly, the petitioner filed an Additional Affidavit, before the Commission on 04.09.2020 itself, to reconsider the same and accordingly, prayed for complying with the propositions declared by the Hon'ble Courts, in the matter of maintainability of Contempt Petitions. However, the Commission has not passed any order on the Additional Affidavit filed by the petitioner on 04.09.2020. Hence, while passing the final order at least, on the matter covered by M.P. No. 20 of 2020, the petitioner prays for an order, on the manner by which the name of the Respondent was ordered to be omitted. This is required in the maintenance of law and justice.

6.5. In the case of *R.MuthukrishnanvsThe Collector ofTiruvallur*, the First Division Bench of the Honble High Court of Judicature at Madras, has ruled as follows, in Contempt Petition No.29554 of 2010 in the order delivered on 20.08.2010.

"10. From the aforesaid provisions, it/s manifestly clear that in a petition for initiation of contempt, a person against whom contempt is alleged must be made party respondent in person. The word Person means a human being, a natural person and not a juristic person, because a human being can commit contempt of court, and not an authority. It is well settled that a command to a Corporation or to the State or its Authority is, in fact, a command to those persons who are officially responsible for the conduct of its affairs. The person holding the post being informed of the order of the Court for compliance or fails to take appropriate action within their power, they are guilty of disobedience and may be punished for contempt.

11. We have given our anxious consideration to the relevant provisions of the Act and the Rules. It is manifestly clear from the Act and Rules, that in a proceeding for contempt, the petitioner must specify the nameof the person, who is guilty of contempt by not complying and thereby violating

the order of the Court, in his individual capacity or in the discharge of his official duty. In the instant case, for example, if the District Collector alleged to have violated and disobeyed the order of this Court, the petitioner must disclose the name of the person who, while holding the post of the Collector of the District committed contempt by not obeying or complying with the order.

12. We, therefore, hold that the present contempt petition without specifying and disclosing the name and description of the person and without making him as a party respondent for the alleged contempt, is not maintainable. The petition being not in accordance with the Act and the Rules, is, therefore, dismissed."

6.6. From the above extracted portion of the order in the above Contempt Petition, the Hon'ble Division Bench, has categorically ruled out that contempt petition without specifying and disclosing the name and description of the person and without making him as a party respondent for the alleged contempt, is not maintainable.

6.7. Further, it has been already submitted before the Commission that even the Hon'ble APTEL, New Delhi, while dealing with a recent matter, concerning on the conduct of certain officials of the TANGEDCO, has passed strong strictures, in Appeal No.56 of 2020, IA No.112 of 2020, IA No.111 of 2020, IA No.295 of 2020 & IA No.534 of 2020 dated 17.08.2020. In the said order, the names of the officials along with their official designations only, were found included in the cause title of the order.

6.8. A Contempt Petition always needs to be filed, against a designation, along with the name of the person, who is holding that post and without which, such petition is not maintainable in law, as per the legal proposition already declared by the Hon'ble Courts, in the above matters, in the above quoted order and judgment.

6.9. Accordingly, the Petitioner again reiterates that the order passed by the Commission on 04.08.2020, for ordering to omit the name of 'Smt. V. Savitha', is an error and therefore, the Commission may order to re-include the name of Smt. V. Savitha in the Contempt Proceedings and need to reconsider the same again, in the light of the declared propositions of law, as already declared by the Hon'ble Division Bench and also followed in the recent order of the Hon'ble APTEL, New Delhi, to the extent extracted above.

6.10. Even though the Petitioner has prayed for such inclusion of the name of the Contemnor, the Commission has not considered and passed any order based on the Additional Affidavit filed by the petitioner and the matter is being continued to be proceeded without the name of 'Smt. V. Savitha' again included in the proceedings in the Petition in M.P. No. 20 of 2020.

6.11. Hence, in the maintenance of law and justice, as declared by the Hon'ble Division Bench of Madras High Court and also as found followed by the Hon'ble APTEL, to the extent extracted above, it is just and necessary to reinclude the name of Smt. V. Savitha again in the proceedings, which was ordered to be omitted, as per the order of the Commission dated 04.08.2020. The Commission may pass a specific order on it, before proceeding to pass any other order on the matter.

6.12. Coming to the aspect of non-compliance, the petitioner has proved beyond doubt that the Respondent Smt. V. Savitha has willfully not complied with the order of the Commission and has also willfully violated the Regulatory provisions to the extent narrated below.

6.13. It is highly surprising to the petitioner that the Respondent has not even come forward to tender a simple apology before the Commission, for having committed the Act of Contempt, by not complying with the order of the Commission and also by not complying with the Regulatory provisions as contained in the Tamil Nadu Electricity Supply Code, 2004.

6.14. The non-compliance of the Respondent was demonstrated by the petitioner in the following two matters.

6.15. The members of the Petitioner, are all HT industries and they have set up their own Wind Energy Generators (WEG5) at feasible locations and are wheeling the wind energy generated from them for their captive use at their respective spinning mills by paying the open access charges as fixed by the Commission from time to time through the respective Tariff Orders. Because of the same, the members of the Petitioner, are having substantial interest in the matter, covered by the instant Contempt Petition.

6.16. Further, the members of the Petitioner are having sufficient amount of Security Deposit, kept with the Respondent TANGEDCO, as per the requirements under Regulation 35 of Tamil Nadu Electricity Distribution Code 2004 and the adequacy of such Security Deposit, would be reviewed by the Respondent TANGEDCO, after crediting the interest accrued, for a financial year at the rates declared by the Commission, during the commencement of the next financial year (i.e) during the months of April / May, as per the Regulatory Provisions, contained in Regulation 5(5)(i) of the Tamil Nadu Electricity Supply Code 2004.

6.17. For the purpose of instant reference, the operative portion of the Regulation is extracted below:

"5(5)(i) Additional Security Deposit:-

The adequacy of Security Deposit may be reviewed and re-fixed once in a year in case of HT consumers and once in every two years in case of LT consumers taking in to account the interest due for credit. Such reviews shall be made in the month of April / May. The rate of interest on the Security Deposit shall be on the basis of the Commission's directive to the licensees in this regard."

6.18. The present Contempt Petition was filed before the Commission, due to the complete inaction and non-compliance of the Respondent, namely Smt. V. Savitha, who is functioning as Chief Financial Controller-Revenue and who is obligated for the compliance of the relevant law, as contained under various provisions of the Electricity Act 2003, the Electricity Rules 2005 and also as per all other provisions, contained in the Regulations, notified by the Commission, in pursuance of its powers entrusted under Section 50 read with Section 181 of the Electricity Act 2003.

6.19. In the same context, the said Smt. V.Savitha is obligated to comply with the Statutory Orders of the Commission as and when such orders are issued by the Commission. However, the said Smt. V. Savitha, the Respondent, is in the habit of completely acting against the Regulatory Provisions and also against the orders of the Commission continuously, with utter disregard to the legal obligations to be complied with by her, on her capacity as Chief Financial Controller-Revenue of TANGEDCO and there are many instances of such violations and non-compliances agitated earlier

before the Commission and also before the Hon'ble Courts of Law in very many matters.

6.20. Under the above background, the petitioner submits that the following are the circumstances, by which the Respondent has committed the said acts of Contempt by non-complying with the orders of the Commission covered by the instant Contempt Petition and has issued totally a deviated communication with utter regard to the order of the Commission.

Issue No.1:

Illegal Collection of Scheduling and System Operation Charges on individual WEG / Machine-wise instead of Wind Fan HTSC No.-wise:

The Commission by its Order No. 2-5, dated 11.10.2008, has first introduced the levy of collection of the Scheduling and System Operation Charges @ Rs.300 / service connection of WEG5 and the Operative Portion of the Order is as below.

"In respect of long term open access customers of wind energy generators the scheduling and system operation charges for a generation capacity of 1650 KW and above shall be Rupees three hundred per day. For generation capacity of less than 1650 KW the charges shall be in proportion to the charges applicable to 1650 KW and above;

This charge shall be levied on the basis of generation capacity per service connection;

This order may be read with the order No.2 dated 15-05-2006;

This order will be deemed to have come into force from 15-05-2006;"

6.21. While the practice of collecting the Scheduling and System Operation Charges, was continuing as such, as per the above order of the Commission, on HTSC No.-wise, the Respondent, with utter disregard to the order of the Commission, has issued

totally a different communication unilaterally, in Memo. No. CFC/FC/DFC/AO.HT/AS.3/REV ID.NO.290-1/16, dated 03.10.2016 and directed all the Superintending Engineers, to collect the Scheduling and System Operation Charges, on individual WEG-wise, instead of HTSC No.-wise, even without any approval or permission from the Commission.

6.22. In Para 2.1 of the said communication of the Respondent, it has been made as below, in contrary to the orders of the Commission above quoted and the practice of collection of Scheduling and System Operation Charges was unilaterally changed from HTSC No-wise to individual machine-wise, without any permission or approval by the Commission.

6.23. The following is the operative portion of the Memo of the Respondent dated 03.10.2016 by which a clear contempt was demonstrated.

"2. In this connection, all the Superintending Engineers of Distribution Circles are hereby informed as follows:

2.1. The Commission has issued Comprehensive Wind Energy Tariff Order No.3 dated.31.03.2016 wherein the Scheduling System Operation charges has been revised and re-fixed at 40% of the conventional charges. Further, in this connection, it is stated that the Commission has fixed Scheduling System Operation charges in the Order No.8 of 2014 dated. 11.12.2014, in respect of the conventional, at the rate of Rs.2000 per day per transaction for long term as well as short term open access customers. Hence, the Scheduling System Operation has to be collected from each WEG machine under preferential tariff/ REC at rate of Rs.800 per day/Rs.2000 per day, respectively from the month of 01.04.2016."

6.24. But however, the Respondent Smt. V. Savitha while filing the counter, has not anything mentioned about the communication issued by the CFC-Revenue on 03.10.2016, which led this matter to be reviewed under Contempt Jurisdiction before the Commission and the Respondent is maintaining that as if the Audit Party of the Respondent have not considered the orders of the Commission and they have only raised the Audit Objections on their own and the Respondent is completely shifting the responsibility of non-compliance on the heads of the Audit Parties, by completely suppressing the fact of having issued a communication from the CFC-Revenue in Memo. No.CFC/FC/DFC/AO.HT/AS.3/REV ID. NO.290-1/16, dated 03.10.2016, directing all the Superintending Engineers, to collect the Scheduling and System Operation Charges, on individual WEG-wise, instead of HTSC No.-wise, even without any approval or permission from the Commission. In the counter filed by the said Respondent, nothing was mentioned about the prevalence of the unilateral instruction through the above communication and how the Audit Parties were relied up on the method of collecting Scheduling and System Operation Charges on individual WEG wise instead of HTSC No. wise as ordered by the Commission.

6.25. It would be highly appropriate to note that when the Respondent CFC-Revenue has troubled herself to file a typed set of papers with index with all other connected documents, has willfully suppressed to file the Memo of CFC-Revenue in Memo. No. CFC/FC/DFC/AO.HT/AS.3 /REV ID. NO. 290-1/16, dated 03.10.2016, by which the whole Contempt is centred. This is a clear suppression of fact, which needs to be taken exceptionally.

6.26. Due to such unilateral instructions issued by the Respondent only, even without the approval of the Commission, the Petitioner felt that such an instruction is totally contrary to the order of the Commission and when found that it led to a blatant violation of the order of the Commission, issued in Order No. 2-5 dated 11.10.2008, made a representation with the Respondent, through its letter dated 07.06.2019, to correct such a false action. Even though, the Petitioner has represented the matter on 07.06.2019 itself, the representation was found not acted up on, in a suitable manner known to law. The existence of an instruction issued by the Respondent on 03.10.2016 itself was not at all anyway explained in the counter filed by the Respondent. While the instruction dated 03.10.2016 forms the crux of the Contempt, being the Respondent in a Contempt Petition, it is the bounden duty of the Respondent to explain as to why such an instruction was issued to collect the Scheduling and System Operation Charges based on the individual WEG wise, instead of HTSC No. wise. Even when the petitioner pointed out the grave mistake and wanted the Respondent to correct herself by a representation filed with the Respondent on 07.06.2019 itself, no reply was emanated from the Respondent.

6.27. Further to the same, the Petitioner further submits that having seen that no response was found evoked from the Respondent, again the Petitioner reminded the Respondent, vide its reminder sent on 14.10.2019 to issue modified instructions by complying with the order of the Commission dated 11.10.2008 in its letter and spirit. However, even after having received the reminder also, the issue was not sorted out and no corrective actions were found taken and no revised instructions have been

found issued to collect the Scheduling and System Operation Charges, on Wind Fan HTSC No.-wise.

6.28. Accordingly, a Contempt Notice was also sent against the Respondent, through the Counsel of the Petitioner on 02.07.2020, by providing a final opportunity and however, the Respondent has not corrected herself, by issuing any modified instructions in line with the order of the Commission, as per the Order No. 2-5 dated 11.10.2008, to collect the Scheduling and System Operation Charges, on HTSC No.-wise, instead of individual WEG-wise. However, much after the filing the Contempt Petition, an instruction has been issued by the Respondent to go with the order of the Commission issued in Order No. 2-5 dated 11.10.2008, only through the communication in Memo No. CFC/REV/FC/REV/DFC/AO/REV/D.851/20, dated 09.11.2020.

6.29. Only by issuance of a Memo by CFC-Revenue on 09.11.2020, after filing this instant Contempt Petition, the non-compliance was partially corrected and instructions were issued to refund the amounts collected illegally from the WEG captive users, which were collected based on WEG wise instead of HTSC No. wise. However, even after the issuance of such instruction on 09.11.2020, after filing this Contempt Petition, none of the Superintending Engineers have attempted to refund the same and accordingly, the petitioner has brought this default of non-compliance, again with the Respondent TANGEDCO on 08.12.2020 and accordingly, the Respondent has issued one more instruction to all the Superintending Engineers to comply with the order of the Commission suitably.

6.30. Unfortunately, till the date of filing, there was no compliance found among the Superintending Engineers concerned also to comply with the instruction of the CFC-Revenue issued on 09.11.2020, even after a follow up instruction issued on 14.12.2020 in Memo.No.CFC/REV/FC/ REV/ DFC/AO/REV/D. 99 1/20.

6.31. Therefore, such an inaction to comply with the order of the Commission in Order No. 2-5 dated 11.10.2008, is still continuing with the Respondent and also with the Superintending Engineers of the Respondent and it makes a clear and distinct non-compliance of the orders of the Commission and thereby the Respondent and also the other Superintending Engineers concerned, have made themselves rendered for punishment for a violation under Section 142 of the Electricity Act 2003, which reads as follows, leading for a suitable action under Section 146 of the Electricity Act 2003.

"Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

6.32. Therefore, the Petitioner submits that the Respondent and the Superintending Engineers of the Respondent have rendered themselves for suitable proceedings under Section 142 of the Electricity Act, 2003 and also rendered themselves for suitable punishment under Section 146 of the Electricity Act 2003, by willfully violating

the order of the Commission dated 11.10.2008, in spite of so many opportunities provided to them, to correct the said deviations and violations.

Issue No.2:

In having defaulted in the matter of Reviewing the Adequacy of Security Deposit for 2020-21 beyond the time limit, as mandated under Regulation 5(5)(i) of TN Electricity Supply Code 2004, even after the expiry of 3 months period and also in having failed to intimate the consumers about the credit of the interest on the Security Deposit within 30.06.2020, in violation of the order of Hon'ble Commission in Order No.1 of 2020 dated 17.02.2020:

6.33. The Petitioner humbly submits that Regulation 5(5)(i) of the Tamil Nadu Electricity Supply Code 2004, mandates as below.

"5(5)(i) Additional Security Deposit:-

The adequacy of Security Deposit may be reviewed and re-fixed once in a year in case of HT consumers and once in every two years in case of LT consumers taking in to account the interest due for credit. Such reviews shall be made in the month of April / May. The rate of interest on the Security Deposit shall be on the basis of the Commission's directive to the licensees in this regard."

6.34. Further, the Commission has issued, inter alia, a direction by way of its Order No. 1 of 2020 dated 17.02.2020, as below, in pursuance of the provisions contained under Section 47(4) of Electricity Act 2003 read with Regulation 35 (4) of the TamilNadu Electricity Distribution Code 2004, further read with Regulation 5(5) (iii) of the TamilNadu Electricity Supply Code 2004.

"3) As per Regulation 5(5)(i/i) of the Tamil Nadu Electricity Supply Code, the interest at Bank Rate or more as specified by the Commission shall be calculated and credited to the Security Deposit Accounts of the consumers at the beginning of every financial year and the credit available including the interest shall be informed to each consumer before the end of the year.

6) The credit including interest available in the accounts of the consumers as on 31-03-2020 shall be intimated to the consumers by 30-06-2020."

6.35. After seeing that the concerned Superintending Engineers of the TANGEDCO are not found making any action, to review the adequacy of the security deposit till 31.05.2020, as mandated under Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004, the Petitioner has made a representation to the Respondent on 11.06.2020, to allow to make the reviews on the adequacy of security deposits for 2020-21 immediately. When the members of the Petitioner approached the concerned Superintending Engineers, it was reported by the Superintending Engineers concerned that the Respondent CFC-Revenue has locked down the entire software, as explicitly made known in the communication of the Respondent CFC-Revenue in Memo No. CFC/REV/FC/REV/DFC/AAO/JA/F.ASD Review/D.400/2 dated 18.07.2020 and accordingly, the Superintending Engineers were not able to review the adequacy of Security Deposit for 2020-21, as was done during all the earlier years.

6.36. When the Petitioner found that the Respondent has not acted up on the representation filed by the Petitioner on 11.06.2020, the Petitioner again sent a reminder to the Respondent on 26.06.2020 on the same matter, requesting to allow to review the adequacy of the Security Deposit required for 2020-21. However, the Respondent, has neither bothered to comply with the Regulatory Provisions, as mandated under Regulation 5(5)(i) of the Tamil Nadu Electricity Supply Code 2004, nor found complied with the directions of the Commission, as issued in its Order No. 1 of 2020 dated 17.02.2020, by crediting the interest over the Security Deposits held by the

consumers before 30.06.2020 and by providing an intimation to consumers before 30.06.2020 about the fact of interest credited, to the extent as extracted above.

6.37. Due to the same, the Petitioner submits that the members of the Petitioner's Association, were not able to adjust the excess security deposits, made available at their accounts, against their respective CC bills, for want of proper review of adequacy of security deposit, within the time limits, as mandated by the Regulation.

6.38. Normally, every year, the review of adequacy of Security Deposit would be taken up by the Superintending Engineers concerned, in the month of April itself. But however, during this year, this has not happened, even after the expiry of the first quarter, which was ended by 30.06.2020. It is pertinent to note that the Commission has already issued the order notifying the rate of interest for the Security Deposit for the year 2019-20, even much earlier by 17.02.2020 itself. However, the workings of interest and crediting it with the available deposits, have not happened in time. This is a complete omission on the part of the Respondent and leads to a gross violation of both the Regulatory Provisions as well as the order of the Commission issued on 17.02.2020 itself.

6.39. As, all the members of the Petitioner's Association were struggling hard financially, in those months, due to the complete lock downs enforced from 25.03.2020 onwards, due to Covid-19 Pandemic Virus spread, adding fuel to the fire, the Respondent, has also not made any attempt to allow the review over the adequacy of the Security Deposit to happen and required for 2020-21. The Respondent has not at all allowed the software to function as normally as it was functioning in all the previous

years, to facilitate the credit of interest, as ordered by the Commission by the Superintending Engineers concerned. By issuance of Memo No. CFC/REV/FC/REV/DFC/AAO/JA/F.ASD Review/D.400/2 dated 18.07.2020 only, the software was unlocked and thereafter only, the Superintending Engineers of the Respondent were able to start the review of adequacy of security deposit after a lapse of more than three months.

6.40. If the adequacy of Security Deposit has been allowed and reviewed as usual by April 2020 itself, after adding the interest accrued, most of the members of the Petitioner's Association, could have adjusted their Excess Security Deposits, against their CC bills for the months of April, May and June 2020, without much financial hardships. Because of not allowing the Superintending Engineers to make such reviews to happen on the adequacy of Security Deposit, the members of the Petitioner's Association have lost their interest for the period from 01.04.2020 to 30.06.2020 also, besides to FY 2019-20 and they have experienced very severe financial crunches in managing funds to pay the CC bills for April, May and June 2020 and however, they have paid the bills, by arranging funds from other sources, by paying exorbitant interest.

6.41. The entire financial management of the members of the Petitioner, during those months was made totally crippled by the Respondent, by her indifferent and un-consumer friendly behaviour and attitude and also by her utter disregard to the Regulatory Provisions and even to the orders and directions of the Commission, to credit the interest and intimate the same to consumers before 30.06.2020.

6.42. The Respondent has not allowed to credit the interest on the deposits held by the consumers to be credited on or before 30.06.2020 and has failed to intimate the same to consumers before 30.06.2020, as ordered by the Commission by its Order No. 1 of 2020 dated 17.02.2020 and accordingly, by such acts of non-compliance of both the Regulatory Provisions, as well as, the order of the Commission, the Respondent has rendered herself for suitable stern action under Section 142 of the Electricity Act 2003 and for suitable punishment also, under Section 146 of the Electricity Act 2003.

6.43. Even after the Petitioner issued a Contempt Notice against the Respondent through its Counsel on 02.07.2020 itself, the Respondent has not come forward to comply with the Regulatory Obligations, as made available under Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004 and further, the Respondent has not even credited the interest over the Security Deposit held during the year 2019-20 and intimated the facts of such credits before 30.06.2020 to the respective consumers, as ordered by the Commission in its Order No. 1 of 2020 dated 17.02.2020.

6.44. Therefore, the Respondent has not only committed the acts of contempt, but is also continuing with the same as far as Issue No. 1 is concerned, with utter disregard to the order of the Commission and also not complied with the Regulatory Provisions as made available in Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004, in the matter of reviewing the adequacy of the Security Deposit for the Financial Year 2020-21, after crediting the interest accrued over the Security Deposits held during the year 2019-20 and failed to intimate the same to the consumers before 30.06.2020, as ordered by the Commission. Such omissions and non-compliance are not new in this matter alone and if the past antecedents of the Respondent are verified, there are

several such cases of non-compliances going on still, with the Respondent, in very many matters.

6.45. Such acts of Contempt, as submitted above, are willful and highly motivated. Therefore, the action of the Respondent requires no sympathy in any manner and such continuing contempt has to be dealt with very firmly or otherwise, the consumers and wind energy captive consumers would be put in to serious hardships and irreparable financial losses.

6.46. The Petitioner therefore submits that the Commission may be pleased to proceed with the matter further, under Section 142 read with Section 146 of the Electricity Act 2003, under the Contempt Jurisdiction available to the Commission, as the Respondent has not provided any useful counter for consideration requiring a sympathy.

6.47. The Commission may also be pleased to order and direct the Respondent to refund the entire Scheduling and System Operation Charges, excessively collected from the Wind Energy Captive Users, in pursuance of the illegal and impugned communication issued through her Memo No. CFC/FC/DFC/AO.HT/AS.3 /REV /D. NO. 290-1/16, dated 03.10.2016, by way of adjustment in the future CC bills, as such refunds are not happening even after the Respondent issued instructions twice one on 09.11.2020 and the other on 14.12.2020. In having issued the instruction itself on 09.11.2020 and 14.12.2020 by the Respondent, the Respondent indirectly admits that there were acts of non-compliances and those instructions would prove that the acts of contempt are continuing still.

6.48. All the consumers in the State were not credited with the interest over their Security Deposit held by them during the year 2019-20 within the time limit as provided by the Commission (i.e) before 30.06.2020 and therefore, it is just and necessary that the Security Deposits should be provided with interest, not only for the financial year 2019-20, but also for the extended period of three months, from 01.04.2020 to 30.06.2020 and accordingly, the Petitioner prays that the Commission may be pleased to pass an order to this effect also, which is legally necessary to protect the interest of all the consumers, without being exploited by the Respondent continuously.

6.49. Accordingly, the Petitioner prays that the Commission may be pleased to deal with this Contempt Petition very firmly under Section 142 of the Electricity Act 2003, for the continuance non-compliance of the orders of the Commission and also in having failed to comply with the Regulatory Provisions as made specifically under Regulation 5(5)(i) of the Tamil Nadu Electricity Supply Code 2004 and accordingly, the Commission may be pleased to pass suitable orders, by punishing the Respondent under Section 146 of the Electricity Act 2003, for the offence of non-compliances committed and also for the offences of continuing the non-compliances, in suitable manner known to law and the Commission may be pleased to order to pay the cost to the petitioner, by recovering the same from the Respondent for having constrained the petitioner to file the Contempt Petition before the Commission by paying a heavy fee of Rs.2 Lakhs.

6.50. The Commission may pass the following orders:-

- A. by directing the Respondent, to refund the entire excessively and illegally collected Scheduling and System Operation Charges so far, based on the impugned communication of the Respondent issued in her Memo No. CFC/FC/DFC/AO.HT/ AS.3 /REV ID. NO. 290-1/16, dated 03.10.2016 and to order the excessively collected amounts, by way of adjustment in the future OA charges demands, payable⁷ by all WEG captive consumers and
- B. to pay interest to all the consumers for the Security Deposits held by them, not only for the financial year 2019-20, but also for the period from 01.04.2020 to 30.06.2020, for having made all the consumers not able to adjust the excess security deposits against their CC bills till July 2020.

The Petitioner accordingly prays that the Commission may pass orders as prayed for and accordingly, punish the Respondent, for having violated the order of the Commission passed in Order No. 2-5 dated 11.10.2008, in so far as the matter of collection of Scheduling and System Operation Charges are concerned and for also having violated the Regulatory Provisions, as available under Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004, in the matter of review of the adequacy of Security Deposit for 2020-21 and also for having violated the order of the Commission, in not crediting the interest to consumers and intimating the fact to consumers, as ordered by the Commission in Order No. 1 of 2020 dated 17.02.2020 and pass such other suitable and necessary orders, as required to be passed under Section 142 read with Section 146 of the Electricity Act 2003, against the Respondent, for having committed the acts of contempt, as submitted above and also for continuing the act of

contempt, as the Commission may deem fit, in the circumstances stated above and thereby render Justice.

7. Additional submissions - Status Report of the Respondent (6.7.21):-

7.1. This status report based on the details collected from the Distribution Circles upto February-2021. Further, this status report is filed as on interim report, since some of the circles are yet to be completed the refund process.

7.2. The status of refund report is submitted as follows:-

Sl .No.	Name of the Circle	No. of HTSC SOC Refunded/ Adjusted	Balance to be Refunded/ Adjusted	Compliance (Y/N)	Reason for Non-Compliance	Remarks
1	2	3	4	5	6	7
1	Chennai Central	11	4,107,640	No		Adjusted in 02/21 cc bill
2	Chennai North	3	14,681,103	Yes		Adjusted in 01 & 02/21 cc bill & balance amount of Rs.18,93,431/- will be adjusted in 03/2021
3	Chennai West	1	2,286,495	Yes		adjusted in the 01 /2021for HT SC no 1085 and 02/21 cc bill for HTSC no 1704
4	Chengalpattu	0	744,544	No		4 Nos. of HT.ScS to be adjusted as per communication of Tirunelveli EDC (Generation circle). Will be adjusted in 03/2021 CC bill.
5	Chennai South1	3	663,316	Yes		2 Nos. of HT.ScS No. 558 & 801 fully adjusted. 1Nos HT Scs No.863 balance Rs.1,09,940 /- will be adjusted in 03/2021 CC Bill.
6	Chennai South2	6	2,936,700	Yes		adjusted in 02/2021 C.C.Bill

7	Kanchipuram	0	0	No		Nil
8	Coimbatore Metro	0	0	No		NO REQUEST RECEIVED FROM CONSUMER FOR REFUND OF SOC& ALSO NO INTIMATION RECEIVED FROM GENERATION END
9	Coimbatore North	6	2411781	Yes		will be adjusted in 03/21 cc bill
10	Coimbatore South	6	1,740,559	No		6 Nos. of HT.Sc's to be adjusted as per communication of Tirunelveli EDC (Generation circle). Will be adjusted in 03/2021 CC bill.
11	Nilgiris	0	0	No	User end	Nil
12	Palladam	1	570340	Yes		
13	Tiruppur	1	1254749	Yes		Adjusted in 02/2021 CC bill - adjusted as per letter received from Tirunelveli EDC (Generating Circle)
14	Udumalpet	0	0	No	user end	NIL
15	Erode	9	16145165	Yes		To be Adjusted in 03 / 2021 CC Bill
16	Gobi	19	457660	Yes		To be Adjusted in 03 / 2021 CC Bill
17	Mettur	45	0	Yes		
18	Namakkal	41	0	Yes		
19	Salem	0	0	No	User End	Revsion have to be done by the Genrating end EDC only.
20	Dindugal	2	101700	Yes	User End	To be Adjusted in 03 / 2021 CC Bill
21	Madurai	1	67545	No		To be Adjusted in 03 / 2021 CC Bill
22	Madurai Metro	1	998400	yes	User End	Adjusted in 02/21 cc bill
23	Ramanathapuram	0	0	No		
24	Sivagangai	1	361680	No		WILL BE ADJUSTED IN 03/2021 CC BILL
25	Theni	0	0	No	User end	NIL
26	Kanyakumari	0	0	No		No request received from Consumer for refund of SOC.
27	Tirunelveli	3	0	Yes		Adjusted in 12/2020 & 02/2021 CC bills
28	Tuticorin	0	0	NO	User end	Nil
29	Virudhunagar	0	0	No	User end	Nil

30	Karur	0	0	No	User end	Nil
31	Nagapattinam	0	0	No	User end	Nil
32	Perambalur	0	0	No	User end	Revision have to be done by the Generating end EDC only.
33	Pudukottai	0	0	No	User end	Nil
34	Thanjavur	0	0	No	user end	Nil
35	Tiruvarur	0	0	No	user end	Nil
36	Trichy Metro	0	0	No		
37	Dharmapuri	0	0	No		NO REQUEST RECEIVED FROM CONSUMER FOR REFUND OF SOC& ALSO NO INTIMATION RECEIVED FROM GENERATION END
38	Krishnagiri	0	0	No		Nil
39	Tirupattur	0	0	No	User end	Nil
40	Vellore	1	0	No	user end	Adjusted in 01/2021 CC bill HT.NO: 1144 Rs.69,65,622/- fully adjusted
41	Cuddalore	0	0	No	user end	Nil
42	Kallakurichi	0	0	No	user end	Nil
43	Tiruvannamalai	0	0	No	user end	Nil
44	Villupuram	0	0	No	user end	Nil
		Total	49529381			

8. Additional Affidavit Filed by the Petitioner (8-7-2021) :

8.1. The petitioner has stated that the Petition filed under Section 142 of the Electricity Act 2003, for taking suitable action on the Non-Compliance of the order of this Commission passed in Order No. 2-5 dated 11.10.2008, in the matter of collection of Scheduling and System Operation Charges and for the Non-Compliance of the Regulatory Provisions as contained in Regulation 5(5)(i) of Tamil Nadu Electricity Supply Code 2004, in the matter of reviewing the adequacy of the Security Deposit for 2020-21 and also in the matter of having not complied with the order of the Commission dated 17.02.2020 in Order No. 1 of 2020, in not communicating the

consumers, the quantum of the interest credited over the Security Deposits for 2019-20 before 30.06.2020.

8.2. The said Petition having been filed by the Petitioner, was taken on the files of the Commission in M.P. No. 20 of 2020 and up on hearing the matter on 04.08.2020, the Commission has, inter-alia, ordered to omit the name 'Smt. V. Savitha' as follows:

"Thiru S.P. Parthasarathy, Advocate appeared for the petitioner. Thiru. S. R. Rajagopal, Additional Advocate General for TANGEDCO appeared and vehemently opposed for having included the name of Tmt. V.Savitha, CFC/Revenue in the cause title in her personal capacity and prayed to direct the petitioner to omit the name of Tmt.V.Savitha and include only Chief Financial Controller / Revenue, TANGEDCO. Arguments of both sides heard and Commission directed to omit the name of Tmt. V.Savitha. The case is adjourned to 08.09.2020 for filing counter on the admissibility of the petition."

8.3. The Petitioner submits that as per the understanding of the Petitioner, normally Contempt Petitions, are being filed only on the name of the person along with his official designation and therefore, in having ordered to omit the name, the Petitioner feels that such a proposition was not considered in the light of the various case laws available from various Courts.

8.4. The Petitioner submits that in the case of R.Muthukrishnanvs The Collector of Tiruvallur, the First Division Bench of the Hon'ble High Court of Judicature at Madras, has ruled as follows, in Contempt Petition No.29554 of 2010 in the order delivered on 20.08.2010.

"10. From the aforesaid provisions, it is manifestly clear that in a petition for initiation of contempt, a person against whom contempt is alleged must be made party respondent in person. The word .Persop_ means a human being, a natural

person and not a juristic person, because a human being can commit contempt of court, and not an authority. It is well settled that a command to a Corporation or to the State or its Authority is, in fact, a command to those persons who are officially responsible for the conduct of its affairs. The person holding the post being informed of the order of the Court for compliance or fails to take appropriate action within their power, they are guilty of disobedience and may be punished for contempt.

11. *We have given our anxious consideration to the relevant provisions of the Act and the Rules. It is manifestly clear from the Act and Rules, that in a proceeding for contempt, the petitioner must specify the name of the person, who is guilty of contempt by not complying and thereby violating the order of the Court, in his individual capacity or in the discharge of his official duty. In the instant case, for example, if the District Collector alleged to have violated and disobeyed the order of this Court, the petitioner must disclose the name of the person who, while holding the post of the Collector of the District committed contempt by not obeying or complying with the order.*

12. *We, therefore, hold that the present contempt petition without specifying and disclosing the name and description of the person and without making him as a party respondent for the alleged contempt, is not maintainable. The petition being not in accordance with the Act and the Rules, is, therefore, dismissed."*

8.5. From the above extracted portion of the order in the Contempt Petition, the Hon'ble Division Bench, has clearly ruled that contempt petition without specifying and disclosing the name and description of the person and without making him as a party respondent for the alleged contempt, is not maintainable.

8.6. Further, even the Hon'ble APTEL, New Delhi, while dealing with a recent matter, concerning on the conduct of certain officials of the TANGEDCO, has passed strong strictures, in Appeal No.56 of 2020, IA No.112 of 2020, IA No.111 of 2020, IA No.295 of 2020 & IA No.534 of 2020 dated 17.08.2020. In the said order, the names of the officials along with their official designations only, were found included in the cause title of the order. Therefore, the Petitioner is of the humble opinion that a Contempt Petition always needs to be filed, against a designation along with the name of the person, who

is holding that post and without which, such petition is not maintainable as per the legal proposition already declared in the matter.

8.7. Therefore, the Petitioner submits that the order passed by the Commission on 04.08.2020, for ordering to omit the name of 'Smt. V. Savitha', may be reconsidered again, in the light of the proposition of law, as already declared by the Hon'ble Division Bench and also followed in the recent order of the Hon'ble APTEL, New Delhi, to the extent extracted above.

9. Additional submissions - Status Report of the Respondent (13.9.21):-

9.1. The respondent filed its status report as on date based on the details collected from the Distribution Circles as on date.

9.2. The status of refund report is submitted by the following circles:

1. Thirunelveli
2. Tuticorin
3. Palladam
4. Trichy Metro
5. Madurai Metro
6. Madurai
7. Sivagangai
8. Dindigul
9. Theni
10. Ramnad

The copy of the letters received from the said circles are submitted to the Commission.

10. Additional submissions - Status Report of the Respondent (8.12.2021):-

10.1. The respondent filed its status report as on date based on the details collected from the Distribution Circles as on date.

10.2. As per the confirmation reports received from the Electricity Distribution Circles, excess collection of Scheduling and System Operation Charges (SOC) have been refunded to all cases. The copy of the letters received from the said circles is submitted for reference. However, any left out cases if reported by the petitioner where the refunds are yet to be made, immediate action will be taken to complete the refund process.

11. Findings of the Commission:-

11.1. The petitioner has filed this Contempt petition against the Chief Financial Controller / Revenue of Tamil Nadu Generation and Distribution Corporation Limited for the non-compliance on two issues viz., (1) An instruction issued by the CFC/Revenue vide Memo. No. CFC/FC/DFC/AO.HT/AS.3/Rev/D.No.290-1/2016 Dated 03-10-2016 as being contrary to Commission's Order No.2-5 dated 11.10.2008 resulting in the collection of Scheduling and System Operation charges on individual WEG wise instead of HT SC No. wise; (2) that the Review of Adequacy of Security Deposit (SD) for the year 2020-21 was not carried out as stipulated under the TNE Supply Code 2004 Regulation 5(5)(i); and the amount of interest was not credited into the SD account of the consumer to adjust the surplus SD in the HT bills of the consumers during April to June 2020. The petitioner has also contended that the interest for the period from 1.4.2020 to 30.6.2020 should be paid to all the consumers. The petitioner has

also prayed to initiate contempt proceedings under Section 142 read with section 146 of the Electricity Act 2003 against the Respondent on the said non-compliance of the two issues stated above.

11.2. We have considered both the issues to arrive at a conclusion as whether there is any non-compliance and willful violation of Commission's Order/Regulation warranting punishment under Section 142 of the Electricity Act 2003 and, if so, to what extent. We have also heard the Respondent by providing an opportunity to present its reply so as to form an opinion as whether there is any willful inaction or the said violations are merely delay in execution and convincing.

Section 142 of the Electricity Act 2003 read as follows -

"Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

11.3. Issue-1: Collection of Scheduling and System Operation charges on individual WEG / Machine-wise instead of Wind Fan HT SC No. wise:

11.3.1. The Chief Financial Controller / Revenue / TANGEDCO with reference to the representation of M/s. Indian Wind Power Association issued an instruction to its field officials (Superintending Engineers/Distribution circles) vide Memo.No.CFC/FC/DFC/AO/HT/AS.3/Rev/D.290-1/16, dated 03.10.2016 to collect the Scheduling and System Operation charges at the rate of Rs.800 per day / Rs.2000 per day in respect of WEGs under preferential tariff / REC respectively from 01.04.2016 and permitted to pay the arrears in 2 installments for the period from 01.04.2016 to 31.08.2016.

11.3.2. In the above instruction, the Superintending Engineers/EDCs were redirected as below –

"2. In this connection, all the Superintending Engineers of Distribution Circles are hereby informed as follows:

2.1. The Commission has issued Comprehensive Wind Energy Tariff Order No.3 dated.31.03.2016 wherein the Scheduling System Operation charges has been revised and re-fixed at 40% of the conventional charges. Further, in this connection, it is stated that the Hon'ble Commission has fixed Scheduling System Operation charges in the Order No.8 of 2014 dated. 11.12.2014, in respect of the conventional, at the rate of Rs.2000 per day per transaction for long term as well as short term open access customers. Hence, the Scheduling System Operation has to be collected from each WEG machine under preferential tariff/ REC at rate of Rs.800 per day/Rs. 2000 per day, respectively from the month of 01.04.2016."

11.3.3. In the meantime, the petitioner has approached the High Court of Madras and obtained interim orders to collect the Scheduling & System Operation charges at the rate of Rs.300 / day irrespective of the capacity from 01.04.2016 onwards.

11.3.4. While this is being followed, the Audit party of the TANGEDCO made observations necessitating raising arrear off demands with reference to the

CFC/Revenue's Memo. dated 03.10.2016 to collect the Scheduling & System operation charges from each WEG. In this connection, the petitioner M/s.Tamil Nadu Spinning Mills Association represented to the CFC/Revenue,in its letter dated 7.6.2019, not to levy the Scheduling and System operation charges for each WEG machine since it is not in line with the Order of the Commission in Order No.2-5 dated 11.10.2008 and the same is also against practice prevalent. If further sought to issue suitable errata for the Memo dated 03.10.2016 so as to collect the Scheduling & System operation charges only @ Rs.300 / Service connection and not for each WEG. The petitioner has also stated reminder was sent vide letter dated 14.10.2019 addressed to the CFC/Revenue for corrective action.

In this connection, the relevant portion of the Commission's Order No.2-5 dated 11.10.2008 is as below –

"NOW THEREFORE, in exercise of the powers conferred upon the Commission under the said regulation 25(4) of the Open Access Regulations, the Commission Orders the following:-

In respect of long term open access customers of wind energy generatorsthescheduling and system operation charges for a generation capacity of 1650 KW and above shall be Rupees three hundred per day. For generation capacity of less than 1650 KW the charges shall be in proportion to the charges applicable to 1650 KW and above;

This charge shall be levied on the basis of generation capacity per service connection;

This order may be read with the order No.2 dated 15-05-2006;

This order will be deemed to have come into force from 15-05-2006"

On the strength of the above provision in order of the Commission, the petitioner has contended that the instruction of the CFC/Revenue amounts to clear non-compliance of the Commission's Order and sought punishment under section 142.

11.3.5. The Respondent has stated that while an instruction issued vide Memo.No.CFC/Rev/ FC/Rev/AS.3/D.392/2017, Dt.1-12-2017 with regard to the Scheduling and System Operation charges payable as directed by the High Court of Madras in various cases filed by the Consumer Associations, it has been instructed as below –

"3.11. The Scheduling and System Operation Charges shall be payable at concessional rates on procurement of power from Renewable Energy sources in view of the Order No.2 of 2017 dated 28-3-2017, Order No.3 of 2016, 4 of 2016 and 5 of 2016 dated 31.3.2016. Apart from these charges, Solar Power Generators, Wind Energy Generators, Biomass generators and the Bagasse based generators shall have to bear the actual line losses in kind as specified in the relevant orders of the Commission and as amended from time to time. The Scheduling charges shall be collected per Wind Farm HT service connection. The statement of charges applicable for various generators as per the tariff order is enclosed herewith."

The Respondent has stated that the instructions have already been issued on 01.12.2017 to collect the Scheduling charges on "per Wind Farm HT Service connection" basis only. However, the internal audit only have raised certain objections without noticing the instruction of TANGEDCO in para 3.11 of its instructions dated 01.12.2017. Hence, once again a clarification was issued vide circular Memo.No.CFC/Rev/FC/Rev/DFC/AO/Rev/D.851/20, Dt.09.11.2020 as below –

" xxxxxxxx

4.0 In view of the instructions already issued vide memo cited under reference 2, the SE/EDCs are clarified to levy and collect the SOC in respect of wind

energy generators on “per WEG HT service connection basis” from 01.04.2016 to 10.08.2017 and to refund the excessively collected scheduling and system operation charges, if any, by the way of adjustment in the ensuing bills”

xxxxxxx”

11.3.6. Neither in Wind Energy Tariff Order No.3 dated 31.3.2016 nor in T.O.No.8 of 2014 dated 11.12.2014 or in any of its order for that matter, the Commission has ordered the collection of Scheduling and System operation charges on the basis of “WEG machine” wise. Hence, the Respondent has to follow the prevailing method of charging of Scheduling & System operation charges as stated in the earlier Order No.2-5 of 2008 dated 11-10-2008 i.e., per Service connection basis only, as contended by the petitioner. While so, we observe that the CFC/Revenue’s instruction Memo dated 03.10.2016 which was issued to the field officials to collect the Scheduling& System operation charges on each WEG machine wise is contrary to the prevailing Orders of the Commission.

11.3.7. However, the Respondent has corrected itself by stating in their instruction dated 01.12.2017 that the Scheduling charges shall have to be collected per Wind Farm HT SC basis. In spite of that, their field officials/internal auditors failed to give effect to such directions with effect from 01.04.2016, and on the contrary they started levying arrears for the earlier periods too and issued demand notices. This action has brought the Respondent to this situation. But it could have been corrected by the Respondent, when the issue was brought before the Respondent by the petitioner vide its representations dated 07.06.2019 and 14.10.2019. But the Respondent did not act on it, which shows the lethargic attitude of the Respondent.

11.3.8. We also observe that only after filing of this contempt petition before us, the Respondent speeded up its action and issued instructions to strictly adhere the earlier instructions to levy the Scheduling and System operation charges at the rate of “per Wind Farm HT service connection” basis, and also directed to refund the excessively collected Scheduling charges by way of adjustment in the ensuing bills. During the hearing held on 2nd March 2021, the Respondent stated that the refund is being processed to the consumers wherever the charges were collected per WEG machine basis and ready to file the status report. And accordingly, the Respondent filed its 3 status report viz., on 06.07.2021, 13.09.2021 & 08.12.2021. At the same time, during the final hearing held on 01.02.2022, the petitioner side also sought to file the list of applicants to whom the refund have not been made, but no such pending list as undertook by the petitioner to file before Commission has been filed till date. From the above status report submitted by the Respondent, we could see that almost 85% of the charges have already been refunded to the HT consumers except few cases in which no representation of refund was received.

11.3.9. Having considered the same, we have to state that though the Respondent has contravened the Commission’s Tariff Order, the corrective instruction for levying of charges based “per WEG HT service wise” was already issued on 01.12.2017; only the refund was pending to be processed and that too was almost complied before conclusion of the proceedings in this case. No report was filed by the petitioner thereafter on pending cases for refund. And considering all these circumstances, we conclude that no serious action is required under Section 142 of the Electricity Act 2003 against the Respondent.

11.4. Issue-2: Delay in Reviewing of Adequacy of the Security Deposit for 2020-21 as mandated under Regulation 5(5)(i) and delay in intimation about the credit of the interest of the Security Deposit as ordered by the commission in Order No.1 of 2020 dated 17.02.2020:

11.4.1. The Tamil Nadu Electricity Supply Code 2004 consists of following provisions with regard to the Review of Security Deposit under Regulation 5(5), and the portion relevant to the case on case is hereby reproduced -

"5(5) Additional Security Deposit:-

(i) The adequacy of Security Deposit may be reviewed and re-fixed once in a year in case of HT consumers and once in every two years in case of LT consumers taking in to account the interest due for credit. Such reviews shall be made in the month of April / May. The rate of interest on the Security Deposit shall be on the basis of the Commission's directive to the licensees in this regard."

xxxx

xxxx

(iii) Interest at Bank rate or more as specified by the Commission shall be calculated and credited to the Security Deposit accounts of the consumers at the beginning of every financial year i.e., April and the credit available including the interest shall be informed to each consumer before the end of June of every year."

11.4.2. The petitioner's allegation in this petition is that the Respondent has not acted up on the provisions of the TNE Supply Code 2004 in reviewing of the Security Deposit for the year 2020-21 in time as a result of which the members of the Petitioner's Association were not able to get the adjustment of excess Security deposits available in their respective accounts.

11.4.3. The petitioner also contended that the Commission issued an Order vide No.1 of 2020 dated 17-02-2020 as per Regulation 5(5)(iii) fixing the interest rate for Security Deposit for the year 2019-20 and instructed the Respondent to intimate the

credit including interest available in the Security Deposit account as on 31.03.2020 to the consumers by 30.06.2020 as below –

Order No.1 of 2020, dt.17.02.2020

"5) The commission directs that the TANGEDCO shall pay interest at 5.70% p.a. on the Security Deposit from the consumers for the financial year 2019-20. The interest on Meter Caution Deposit shall be 5.70% p.a. as per the Commission's Order on Non-Tariff related Miscellaneous charges.

6) The credit including interest available in the accounts of the consumers as on 31.03.2020 shall be intimated to the consumers by 30.06.2020."

11.4.4. Though the Regulation provisions and Order of the Commission available as above, the Respondent has not carried out the above process and necessary adjustment was not made to the respective consumers those who have excess Security Deposit. It is also contended by the petitioner that the loss of interest for the delayed period was not credited to the consumer's account. Such delay in process is committed by the petitioner is in violation of the Provisions of the Tamil Nadu Electricity Supply Code 2004 and Orders of the Commission dated 17.02.2020.

11.4.5. The members of the Petitioner's Association have stated that they were struggling financially, in the recent months, due to the complete lock down enforced from 25.03.2020 onwards due to Covid-19 Pandemic virus spread and hence tried much hard to allow the review of the adequacy of Security Deposit since the software was blocked by the Respondent. The petitioner has sought to contend that such an inaction / non-exercising of the Regulation 5(5) and non-compliance of Order dt.17.2.2020 warrants action under Section 142 of the Electricity Act, 2003.

11.4.6. Under Regulation 5(5) of the Supply Code 2004, the Respondent is bound to review the adequacy of Security Deposit. It is also a fact that due to outbreak of COVID-19, the Govt. of India & Govt. of Tamil Nadu announced complete lock down with effect from the midnight of 24.03.2020 and subsequently it was extended several times due to the prevailing COVID situation in the State.

11.4.7. The Government of Tamil Nadu has declared complete lock down for the period of 21 days from 25.3.2020 vide its G.O.172 dated 25.03.2020; and it was subsequently extended upto 30.04.2020 vide G.O.19 dated 13.04.2020. The respondent has stated that due to announcement of subsequent continuous lock down instructions, the due date for the payment of Current consumption charges & other arrear payments payable by HT consumers to TANGEDCO was extended upto 06.05.2020 without resorting to physical disconnection; and further extension of time for the payment of CC charges and other arrears was permitted to the HT consumers as and when the GoTN orders extending lock down.

11.4.8. The Review of Adequacy of Security deposit involves Calculation of interest on the Security Deposit available as on 31st March of an year and crediting the same to the consumer's account; and then reviewing the adequacy of Security Deposit based on 5(5)(ii) of Supply Code. If the SD available in the Consumer's account is less than the revised Security Deposit the balance shall be collected; or if it is found excess the same shall be adjusted/refunded as per relevant provisions.

11.4.9. The respondent has stated that in view of pandemic, the levy and the collection of Security deposit was postponed by TANGEDCO by extending time for securing its payments. This has also enabled the HT consumers a relief from such

additional payment. Instructions were not issued to the EDCs to raise demand of Security Deposit, though the review of adequacy of additional current consumption deposit for the Financial year 2019-20 has been completed before 30th April 2020.

11.4.10. It is evident that while the entire State is under lock down, the TANGEDCO office was functioning with limited staff, and hence, the demand for ASD could not be raised due to such situation. It is also a fact that in the process of reviewing SD, both raising of demand and refund/adjustments run on the same software of TANGEDCO. It is also seen that finally the respondent issued instructions to its field officials vide its Memo.No.CFC/Rev/FC/Rev/DFC/AAO/JA/F.ASD review/D.400/20, Dt.18.07.2020 to ensure the adequacy of Security Deposit following the Regulation 5(5)(iv) and (v) of the Supply Code 2004.

11.4.11. As Ordered by the Commission in its Order No.1 of 2020 dated 17.2.2020, the credit available in the consumer's account (including interest) shall have to be intimated to the consumers by 30.06.2020. In the present case, the Respondent has instructed its field officers on 18.7.2020 to process the refund of excess SD/demand for inadequate SD though it has completed its review already. Hence, it is to be accepted that the delay is obviously due to Covid-19 lock down. The delay on the part of the respondent in this case is only 18 days and hence we are inclined to condone it, since the same has not occurred due to the act of the Respondent.

11.4.12. One more question to be answered is, the interest sought by the petitioner for the period from 1.4.2020 to 30.6.2020; while in normal course of business the TANGEDCO is permitted to intimate the interest (as on 31.3.2020) only by 30.6.2020, now after deciding the matter as above i.e., condoning the delay of 18 days

due to outbreak of COVID-19, we are also not inclined to order interest for such period which is the time duration actually taken by TANGEDCO for its processing the review amidst of lock down situation.

11.5. With the above findings on the two issues discussed above, direct the Respondent that - Any internal instruction issued by the TANGEDCO shall have to be in line with the Orders of the Commission. In case any contravention of Orders/Regulations is found/pointed out at any level, it has to be rectified immediately on their own. The Respondent should not take advantage of any such mistakes and wait for same to be pointed out by any of the HT Consumer/their Association. Having been pointed out by the petitioner on specific contravention of the Orders/Regulation, it should have been attended to by the Respondent immediately. The consumers should not be forced to approach the Commission on every such occasion for remedy. As the Respondent issued instruction for rectification of error and directed field officials to effect refund, it is seen that most of requests of refund of Scheduling & System operation charges have already been settled by the Respondent during the course of hearing itself, hence we are not ordering for any action under Section 142 of the Electricity Act 2003; however, if any of such non-compliance/violation of Orders is brought to the knowledge of the Commission in future action will be initiated under Section 142.

With these directions, this petition is disposed of.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission