



**IN THE HON'BLE TAMIL NADU ELECTRICITY
REGULATORY COMMISSION
CHENNAI**

21st DAY OF APRIL 2004

PRESENT:

The Hon'ble Chairman Mr. A. Balraj, IAS., Retd. - Chairperson

and

The Hon'ble Member Mr. S. Thangarathnam - Member

Tariff Review Petition No. 2 of 2003

M/s. Gem Spinners India Ltd.
14, Mangalam Village,
Kancheepuram District,
Tamil Nadu 603 107.

... Petitioner.

Vs.

1. State of Tamil Nadu
Rep. by Secretary,
Energy Department,
Fort St. George,

2. The Secretary,
Ministry of Handlooms & Handicrafts, Textiles
Khadi ((C2) Department,

3. Tamil Nadu Electricity Board by its
Chairman,
800 Anna Salai,
Chennai 600 002.

... Respondents

This petition coming on for final hearing before us on this day in the presence of Tvl. M.R. Subbiah and P.S. Rathinamani Advocates for the Petitioner, of Thiru Jo. Jaganathan, City Government Pleader for the Respondents 1 and 2, and of Thiru G. Vasudevan, Advocate for 3rd Respondent; having perused the petition, affidavits, counters and connected papers and

having heard the arguments of both sides, this Commission deliver the following

ORDER:

ORDER

1. Prayer of the Petitioner

The prayer of the Petitioner in TRP No. 2 of 2003 is that this Commission may be pleased to grant relief and concession. The prayer of the Petitioner in M.P. No. 3 of 2003 in TRP No. 2 of 2003 is that this Commission may be pleased to grant an order of injunction of the demand of peak hour consumption charges, Electricity Tax and revised electricity consumption Tariff so far as the Petitioner is concerned till the disposal of main Review Petition and thus render justice.

2. Facts of the case of the Petitioner

(i) The facts of the case as set out in the TRP No. 2 of 2003 are briefly summarised as follows:

(a) The Petitioner Unit was established in 1990 and commercial production commenced in the year 1994 and had established a very good overseas market for their products namely production of 100% cotton yarn. The Petitioner moved the Board for Industrial and Financial Reconstruction (BIFR) to declare them as a Sick Industrial Company under Section 3 (1) (o) of Sick Industrial Companies (Special Companies – Special Provisions) Act, 1985. An order was passed on 1.9.1999 declaring the Petitioner unit as sick under the said Act 1985.

(b) A Draft Rehabilitation Scheme (DRS) was made and circulated to Government of Tamil Nadu. and TNEB the Respondents herein for communicating their objection or consent. The Government of Tamil Nadu has sent a reply to the show cause notice by the BIFR stating that the Petitioner unit cannot be classified as a State Industrial Undertaking under

section 2(5) of Tamil Nadu Relief Undertakings (Special Provisions) Act 1969 and as such Government of Tamil Nadu cannot grant any relief and concession as provided in the sanction scheme

(c) The Petitioner is legally eligible for concession in peak hour consumption charge, Tariff and Electricity Tax waiver as per the direction of BIFR.

(ii) The Secretary to Government of Tamil Nadu Energy Department, the 1st Respondent herein has stated that the Government have taken a policy decision to scrap the exemption from Electricity Tax except agriculture and hut service and hence the request of the Petitioner is not possible for compliance. The Secretary to Government of Tamil Nadu has also stated that there are no merits in the Petitions and the Petitioner Company is not entitled to the relief sought for by them.

(iii) The TNEB, the 3rd Respondent herein in their counter affidavit has stated that they could not interfere in the revision of Electricity Tariff charges since this Commission has got such powers. The TNEB have further stated that if the Government announces any tariff concession, it will be implemented by extending the same to the Petitioner's industry and that there is no provision for revising electrical tariff and peak hour consumption charges in the terms and conditions of supply of electricity.

3. Point in issue

The point in issue is whether the prayer of the Petitioner referred to in para 1 above can be granted or not.

4. Findings of the Commission

With reference to the above point in issue, it may be stated that the grant of relief prayed for by the Petitioners viz. grant of concession in tariff will amount to showing of undue preference to the Petitioner which is prohibited by Section 29(3) of the Electricity Regulatory Commissions' Act 1998 (since repealed by the Electricity Act 2003) as well as under Section 62(3) of the new Electricity Act 2003. Under the said Act, differential tariff is permissible only on the grounds

mentioned therein viz. consumers load factor, power factor, voltage, total consumption of electricity during any specified period, etc. and that such differential tariff is not permissible on the ground that the consumer viz. the Petitioner herein is a sick unit. The relief if any granted would amount to be discriminatory which is repugnant to Act. Regarding waiver of electricity tax it may be stated that it is the first Respondent viz. the State Government of Tamil Nadu which has got the power to waive the electricity tax which is levied by the State Government under a different statute and this Commission has nothing to do with the electricity tax. Further it may be stated that the first Respondent in their Counter Affidavit has declined to grant the exemption in favour of the Petitioner Company from the payment of electricity tax.

5. Conclusion

The Commission has no jurisdiction under the Electricity Regulatory Commissions Act, 1998 which has been repealed by the Electricity Act, 2003 as well as the Electricity Act 2003 to grant the relief asked for. Hence the TRP No. 2 of 2003 and M.P. No.3 of 2003 are liable to be dismissed, as there is no mistake of fact, ignorance of any material fact or any error apparent on the face of the record so as to justify for the review. TRP No. 2 of 2003 and M.P. No. 3 of 2003 are accordingly dismissed without costs.

Pronounced in the Open Court by this Commission on 21st April 2004

**Sd.....
(S. THANGARATHNAM)
Member**

**Sd.....
(A. BALRAJ)
Chairman**

List of Witnesses examined

NIL

List of Documents

NIL

**Sd.....
(S. THANGARATHNAM)
Member**

**Sd.....
(A. BALRAJ)
Chairman**

/Certified True Copy/

**Secretary
Tamil Nadu Electricity
Regulatory Commission
Chennai 600 018.**