



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

22nd DAY OF JUNE 2006

PRESENT:

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

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

and

The Hon'ble Member Mr. B.Jeyaraman - Member

D.R.P.NO.3 OF 2006

M/s Arkay Energy (Rameswaram) Limited,
Rep by its Director
Chennai – 600017

- Petitioner

- vs -

The Tamil Nadu Electricity Board,
Rep by its Chairman,
800, Anna Salai, Chennai – 600002

- Respondent

The above petition came up for final orders before this Commission, on the 22nd June 2006 in the presence of Thiru R. Muthukumaraswamy, Sr. Counsel representing M/s. Bhavadharani, Counsel for Petitioner. The Respondent is absent in spite of notice which has been acknowledged by the Respondent. Under Regulation 28 (1) of TNERC (Conduct of Business) Regulations 2004, this Commission may proceed exparte against the Respondent Board failing to appear. This Commission after hearing the arguments of Sr. Counsel Thiru R.Muthumumaraswamy representing the Petitioner and upon perusing the Petition and all other connected records pronounces the following

ORDER

1. M/s. Arkay Energy (Rameswaram) Ltd., Chennai 17 has filed the above DRP No.3 of 2006 challenging the Lr. No. D.041/06 dated 16.6.2006

issued by the TNEB (hereinafter referred to as Impugned Letter) which directed the Petitioner to limit the generation within 35 MW as ordered by the Hon'ble High Court, Madras in WMP 13259/2006 in WP 11668/2006 filed by the Petitioner. In the above petition, the Petitioner has alleged that the aforesaid Impugned letter is in flagrant violation of the orders passed by this Commission dated 9.6.2006. The prayer of the petition is as follows:

"(i) to quash the impugned Letter of the Respondent comprised in Letter No. CE/PPP/SE/PP/EE/AEE/PPP/F.26 Vol.VII Arkay/D.041/06 dated 16.6.2006;
(ii) issue directions to the Respondent strictly to strictly adhere to the order passed by this Hon'ble Commission in DRP 1 & 2 2006 and
(iii) pass such further or other orders as this Hon'ble Commission may deem fit to pass in the circumstances of the case".

2. The above petition has been treated as a complaint u/s 142 of the Electricity Act 2003 (Act 36 of 2003) and the Petitioner as a complainant. A show cause notice was issued to the TNEB requesting TNEB to file a written reply to the show cause notice and to the above petition filed by M/s. Arkay Energy Ltd. on 22.6.2006 which is the date fixed by this Commission for hearing on the above petition.

3. The Learned Sr. Counsel for the Petitioner while reading paragraph 6 of the above orders of this Commission in DRP No.2 of 2006, contended that the orders of this Commission were based on the report of the Committee which has been concurred by this Commission in toto. He contended that a representative of the Respondent Board had participated in the deliberation of the Committee. He stated that no reference to the orders of this Commission has been made by the Respondent Board in the Impugned letter. He also pointed out that the Petitioner had produced letters before this Commission addressed to the Registry of High Court for the withdrawal of WP filed before the Hon'ble High Court. He pointed out that the Impugned letter is not only violative of section 142 of the Electricity Act 2003 but is also wholly illegal.

4. Findings of the Commission

In regard to the availability of transmission facility and issue of essentiality certificate to the Petitioner which is the subject matter of dispute in DRP No. 1 and 2 of 2006, this Commission has got power and jurisdiction to adjudicate any dispute by virtue of the powers conferred upon it by the second proviso to section 9 (2) read with section 86 (1) (f) of the Electricity Act 2003.

5. In pursuance of the above statutory provisions of law, this Commission has adjudicated upon the dispute between the Petitioner and TNEB raised in DRP Nos. 1 and 2 of 2006 and pronounced its orders on 9.6.2006. The operative portion of the order in DRP No. 2 of 2006 is extracted below for reference.

"The high level Technical Committee appointed by the respondent Board to ensure the possibility of increasing the generation by ARKAY CPP had concluded that there is no possibility with the present transmission constraints to increase the generation beyond 35 MW in and around Valuthur area. However, the findings of the Committee appointed by this Commission in regard to DRP 1 of 2006 which is concurred by this Commission in toto, the petitioner company can be allowed to avail transmission facility upto 45 MW by keeping open the switch at Mandapam SS towards Arkay (Rameswaram) CPP.

As per the statement of Respondent Board in para 21 of the counter affidavit, the 230 KV Valuthur SS has been sanctioned to evacuate 400 MW of power from that area. The Petitioner company can be accommodated upto 65.0 MW from Valuthur SS even after its commissioning for which the essentiality certificate had already been issued to the petitioner company. The respondent Board is directed to recommend for the issue of essentiality certificate immediately after studying the feasibility of accommodating the additional 20 MW generation, in any case within a period of six weeks from the date of issue of this order."

6. The action of the TNEB in issuing the Impugned letter and particularly the penultimate sentence of the letter namely "**You are also directed to limit the generation within 35 MW as ordered by Hon'ble High Court, Madras**" amounts to a contravention of the above orders of this Commission. The above orders of this Commission violated by the TNEB were based upon the report of the Committee appointed by the Commission wherein one of the members is a Superintending Engineer of TNEB. The above Committee has given an unanimous report which has been concurred by this Commission in toto. The TNEB ought to have complied with the above orders of this Commission in toto. But unfortunately, the TNEB has failed to adhere to the orders of this Commission. If at all TNEB is aggrieved by the above orders, then it should have taken it up on appeal with Appellate Forum as constituted under

the said Electricity Act 2003 or should have filed a review petition to this Commission.

7. The Impugned letter is repugnant to the orders of this Commission. The failure to implement the orders of this Commission is violative of section 142 of the Electricity Act 2003 and also on top of it the Impugned letter dated 16.6.2006 issued by TNEB after the orders of this Commission issued on 9.6.2006 is illegal, deserving relevant action.

8. However, taking a lenient view, the Commission feels it appropriate to issue the following directions instead of levying the penalty under section 142 of the Electricity Act 2003.

- (i) The Commission, therefore, orders the deletion of the following penultimate sentence in the Impugned letter namely **"You are also directed to limit the generation within 35 MW as ordered by Hon'ble High Court, Madras"** The Commission further directs the TNEB the Respondent to inform the Petitioner accordingly.
- (ii) The TNEB is further directed to strictly adhere to the orders of this Commission issued in DRP No.2 of 2006 as extracted above. In other words, the TNEB is directed to permit the Petitioner to generate upto 45 MW as per the report of the Committee constituted by this Commission in DRP Nos. 1 and 2 of 2006 and as concurred in toto by this Commission.
- (iii) A compliance report of this order should be sent to this Commission immediately and in any case not later than **26.06.2006.**

In the event of any failure on the part of the TNEB to comply with the above directions, this Commission will have no other alternative but to impose the penalty prescribed under section 142 of the Electricity Act 2003 without any further proceedings.

9. With the above directions DRP No. 3 of 2006 is finally disposed off. There would be no costs.

**Pronounced in the Open Court by this Commission on this the day of
22nd June 2006.**

Sd.....

Sd.....

Sd.....

(B. JEYARAMAN)
Member

(S. THANGARATHNAM)
Member

(A. BALRAJ)
Chairman

/Certified Copy/

Secretary
Tamil Nadu Electricity
Regulatory Commission