

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

PRESENT

Thiru S.Kabilan - **Chairman**
Thiru R. Rajupandi - **Member**

D.R.P.No.1 of 2009 and IA 3 of 2009

M/s. Jagannath Textile Company Limited
Rep. by its Authorised Signatory
Registered Office: 23-25-1 East Periyasamy Road
R.S. Puram
Coimbatore – 641 002 - **Petitioner**

Vs.

1. The Chairman
Tamil Nadu Electricity Board
No.144, Anna Salai,
Chennai 600 002.
2. The Chief Engineer (PPP)
Tamil Nadu Electricity Board
No.144, Anna Salai,
Chennai 600 002
3. M/s. Sai Regency Power Corporation Ltd.]
Office No.3, 2nd Floor
Crown Court
128 Cathetral Road
Chennai – 600 086 - **Respondents**

The D.R.P. No. 1 of 2009 and IA No.3 of 2009 in the said DRP No. 1 of 2009 came up for hearing on 29-7-2009. The Commission upon perusing the said petitions and other connected records of the case and upon hearing the arguments of both sides passes the following:

ORDER DATED 26th August 2009

1. Prayer in DRP No. 1 of 2009

The prayer in DRP No. 1 of 2009 is to direct the TNEB to permit the petitioner to make intra state sale of the power that is to be generated by them in their power plant at Coimbatore either to a third party or to TNEB itself in the manner proposed by them in their representation dated 1-12-2008.

2. Prayer in IA No.3 of 2009

The prayer in IA No.3 of 2009 is to issue appropriate directions directing the respondent Board to accord permission for intra state sale of the power generated from the petitioner's power plant in the manner proposed by them in their representation dated 1-12-2008, pending disposal of the above DRP.

3. Facts of the case

Petitioner is a Company registered under the Companies Act and it is holding a Captive Power Plant (CPP) at Coimbatore with furnace oil as a raw material. In the year 2006, the petitioner was granted service connection HTSC No.418 by TNEB and the sanctioned demand was 5050 KVA which was subsequently increased to 8100 KVA. The petitioner stopped generating power in their power plant and were consuming their requirement entirely from TNEB source. The petitioner became an associate / constituent unit of 3rd respondent (Sai Regency Power Corporation Ltd.) which was setting up a group CPP using natural gas with whom petitioner entered into an agreement in terms of which they are entitled to 6 MW equivalent to approximately 34 lakhs units per month from the said 3rd Respondent through TNEB wheeling. The 3rd Respondent commissioned the said group CPP in Ramanathapuram in February 2007. The petitioner made a representation to the 1st

Respondent on 1-12-2008 requesting permission to sell the power generated to third parties. The office of CE / PPP have informed orally to the petitioner that the request of the petitioner cannot be accepted. Hence this DRP is filed by the petitioner.

4. Contentions of the Petitioner

Since the source of power which is in great demand in the State is going waste, the petitioner's proposal to permit the sale of power ought to be considered by TNEB. The refusal of 2nd Respondent to accept the said proposal is against public interest and illegal. The failure on the part of 2nd Respondent to accept the proposal of the petitioner to permit intra-state sale of power to be generated by them is in violation of Art 14 of Constitution of India and Sections 9 and 10 of Electricity Act 2003

5. Contentions of Respondent Board

a. Act or Regulations nowhere contemplates the grant of OA to a captive consumer to sell that energy to third parties.

b. At the time of granting permission to install 2 & 2.7 MW captive generation, the petitioner informed the TNEB that they have no proposal to export power to the grid.

c. Petitioner has not applied to TNEB for grant of OA and third party sale till date.

d. Petitioner's Company's letter dated 1-12-2008 is not an approval for sale of power to third parties as per OA Regulations.

e. The method devised by petitioner company is not covered by any of the provisions of Electricity Act 2003 or OA Regulations 2005 or Order No.2 dated 15-5-2006.

f. The petitioner's request is not at all for intra-state OA and it is also not covered by any of the regulations of TNERC.

g. There is no provision in Section 86 (1) (f) for adjudication of any disputes which are not covered by any regulations

6. Findings

6.1.As the petitioner did not press his application for interim relief, I.A.No.3 / 2009 was tagged along with DRP No.1/2009.

6.2. The petitioner established a furnace oil captive power plant with a capacity of 5.4 MW in 2005. Subsequently on 13-11-2006, the petitioner obtained a HT service connection No.418 from the TNEB for a demand of 5050 KVA. The petitioner enhanced the demand to 8100 KVA shortly thereafter. The petitioner's generators were synchronized with TNEB grid on 1-12-2006 at the request of the petitioner.

6.3. It is evident that the petitioner availed of open access to the TNEB's grid on 1-12-2006. The petitioner became a captive user of the power generated by M/s. Sai Regency Power Corporation on 27-5-2006 and began to consume power from the captive generator since February 2007. The petitioner shut his furnace oil plant and depended on the TNEB grid as well as the captive generator for his power needs.

6.4. The petitioner now wants to run the furnace oil power plant of 5.4 MW, retain 1.4 MW out of this generation and sell the balance 4 MW to third parties.

6.5. It is to be noted that the petitioner does not have surplus power of his own for sale. His own capacity is limited to 5.4 MW as against the demand of 8.1 MVA obtained from TNEB. It is clearly established that he is deficit in power and he can never be surplus in power. He depends on TNEB grid and the captive generator for his power needs. He will be generating surplus power, only if he runs the furnace oil plant and draws from the TNEB grid as well as the captive generator. In such a situation he will be indirectly selling the power procured from the captive generator and the TNEB grid. In the absence of a trading licence, he has no authority to do so

7. Conclusion

The petition is dismissed; no costs.

8. Appeal

An appeal against this order lies to the Appellate Tribunal for Electricity as per Section 111 of the Electricity Act 2003 within a period of forty five days.

Pronounced in the open Court by this Commission on the 26th August 2009.

**(Sd.....)
(R. RAJUPANDI)
Member**

**(Sd.....)
(S. KABILAN)
Chairman**

/ True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**