

**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**

**and**

**Thiru. R. Rajupandi - Member**

**D.R.P. . No.2 of 2009**

KLRF Limited,  
75/B, Benares Capes Road,  
Gangaikondan 627 352  
Tirunelveli District. .. Petitioner

Vs

The Chief Engineer / NCES  
Tamil Nadu Electricity Board,  
No.144, Anna Salai,  
Chennai 600 002 .. Respondent

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The above D.R.P. No.2 of 2009 came up for final hearing on 29<sup>th</sup> July 2009. The Commission upon perusing the above petition and other connected records of the case and upon hearing both sides passes the following order, namely;

**ORDER DATED 26<sup>TH</sup> AUGUST 2009**

**1. Prayer of the petitioner**

The prayer of the petitioner in DRP No.2 of 2009 is to direct the respondent to make the necessary correction in the record of the respondent board correcting the name of the petitioner company as KLRF Limited instead of M/s. Kovilpatti Lakshmi Roller Flour Mills Limited.

## **2. Facts of the Case**

The petitioner company was carrying on the business under the name and style of Kovilpatti Lakshmi Roller Flour Mills Limited. Subsequent to the name change of the petitioner company, the petitioner company applied to the respondent requesting for incorporation of the name change pursuant to the permission accorded by the Registrar of Companies for the HT Service No.121, 176, 193 of Kanyakumari EDC, 397, 398, 1245, 1670 and 1671 of Tirunelveli EDC. The respondent has in and by Lr.No.CE/NCES/SE/EE/WPP/AEE3/F. M/s. KLRF Limited/D/1350/08 dated 7.1.2009 (hereinafter referred to as the impugned letter) directed the petitioner inter alia to pay the Name Transfer Fee of Rs.1,00,000/- (Rupees one lakh) only per WF H.T. service.

## **3. Contentions of the petitioner**

(a) The petitioner in his Lr.No.WF/2008/2009 dated 22.12.2008 addressed to the respondent has stated that there is no name transfer arising out of legal succession or sale of property but only a name correction on account of name change after having applied and obtained fresh certification of incorporation from Registrar of Companies, Tamil Nadu. There has therefore been no legal succession nor sale involved.

(b) The impugned letter of the respondent in levying the impugned demand on the ground of sale of property or legal succession is erroneous, baseless and against the facts of the case and circumstances of the case.

## **4. Contentions of the respondent board**

(a) The petitioner has changed its company name from M/s. Kovilpatti Lakshmi Roller Flour Mills Limited to M/s. KLRF Limited and for changing their name they have paid the fees to the Registrar of Companies, Commercial Tax and Sales Tax office etc. Therefore for the service

rendered by the Board for changing the name, the petitioner is liable to pay the Name Transfer fee fixed by the Hon'ble Commission.

(b) The petitioner has changed its name from M/s. Kovilpatti Lakshmi Roller Flour Mills Limited to M/s. KLRF Limited, which squarely comes under the clause 7.0 of miscellaneous charges contained in MP No.41 of 2003, and the petitioner is bound to pay the charges for the change of name, as the change of name or transfer of name tantamounts to one and the same.

## **5. Arguments**

5.1.1 The petitioner's counsel contended that charges for the "Name Transfer" as fixed in MP No.41 of 2003 arise only out of two grounds namely, legal succession and sale of property and his case does not fall under those two categories. He further contended that his request was only for correction of name on account of change in name after having applied fresh certificate of incorporation from Registrar of Companies and no legal succession or sale is involved. He referred to the second paragraph of clause 3.9 of the Commission's order on non-tariff related miscellaneous charges wherein TNEB's contentions have been reproduced. The contentions of TNEB as reproduced in the said clause 3.9 are as follows:-

*"Some developers, who do not have own or subsidiary industry, initially install windmills and claim 80% accelerated depreciation in income tax and subsequently opt for sale of windmill to another party having own / subsidiary industry and seeks approval of the Board for name transfer of the wind mill service. Availing of wheeled energy in HT industry results in avoidance of HT tariff – 1 to the extent of wheeled power thereby causing revenue loss to the Board and providing substantial benefit to the wind farm developer. The Board has to render frequent services in all such windmill services, that too resulting in loss of revenue."*

5.1.2 To a question posed by the Commission as to whether his case would fall under legal succession , the petitioner's counsel

responded by saying that it was not a case of legal succession but a transfer from one entity to another and no charges are leviable.. .

5.1.3 The counsel for the Electricity Board contended that Rs.1,00,000/- has to be paid for any transfer and when there is a change in name, the law does not allow one to transfer a property in his own name. He further contended that there is no difference between the work involved in the processing of Name Transfer Application arising out of legal succession or sale of property and name change and they are one and the same. He further contended that the same man power is required for processing the name change also and as such, the Board is entitled to levy a sum of Rs.1,00,000/- for change of name also.

5.1.4. It was also contended that section 45 of the Electricity Act 2003 which provides for collection of fixed charge, viz, Name Transfer Fee as fixed by the Commission, is applicable to the present case. More importantly, the counsel for the respondents laid stress on the point that unlike the charges approved by the Commission in respect of Low Tension Services which is shown as category (I) in the order under reference, there is no demarcating line in between the columns “ Legal Succession” and “ Sale of Property” in the Commission’s order under reference in respect of charges approved by the Commission in the case of Wind Mills shown as Category III . According to the counsel for the respondent, the intention of the Commission in this regard was to pass a general order on all cases of name transfer and it cannot be confined to Legal Succession and Sale of Property alone and in such a context, the charges can be collected in all cases of name transfer.

5.1.5. However, this was sought to be opposed by the counsel for the petitioner on two grounds. Firstly, the petitioner’s counsel contended that there is no place for interpretation of a judicial order i.e, the order of the Commission. Secondly, he contended that respondent submitted proposals to the Commission for charges in respect of Legal Succession and Sale of Property only and as such the present issue cannot be extended beyond those two heads so as to include all cases of name transfer. The learned counsel for the petitioner further contended that TNEB can only file a fresh

Application/Petition and there is no bar in creating a third category in future but in the present case, the fee is not applicable

## **6. Findings**

6.1. Non tariff related miscellaneous charges such as service connection charges, meter rent and meter related charges, meter caution deposit, reconnection charges, charges for replacement of meter card, service charge for dishonoured cheque, charges for name transfer, development charges, registration charges, earnest money deposit, current consumption deposit and erection charges were determined by the Commission on 31-8-2004 in exercise of the powers conferred under Sections 45, 46, 47 and 50 of the Electricity Act 2003. The charges were brought into force with effect from 1-10-2004. These charges were finalized with reference to petition No.M.P.41 of 2003 filed by the Tamil Nadu Electricity Board. Para 2.1.8. of the Order of the Commission refers to the representations of various organizations before the Commission on the charges of name transfer.

6.2. Para 2.1.8. is extracted below:

*“2.1.8. a) Indian Wind Power Association, in their written submission and during the public hearing expressed their concern for the exorbitant charges for name transfer of services of windmills and prayed for fixing the same at Rs 7500. b) SIMA have stated that “The decision for transfer of ownership of assets from one owner to another is based on the evaluation of various commercial considerations. This being the case, imposition of abnormally high name transfer fee would adversely affect the cost of the transfer. Thus we, urge the Commission to waive the name transfer fee.”*

*c) Mr. C.A.Balasubramanian has stated that “ The transfer of properties,either domestic or industrial with power supply from TNEB by sale or legal succession are governed by State Laws and TNEB has nothing to do with the sale or legal succession of consumer’s properties. The exorbitant charges demanded by TNEB for name transfers are not valid, not justifiable as fair and will not stand*

*under the scrutiny of law. Hence the levy of charges for name transfer for all categories of consumers should be deleted.”*

*d) The Planters Association of Tamil Nadu stated that “Commercial category (Tariff-V), the payment of Rs.2000/- for name transfer of service by sale of property is excessive. This should be reduced to Rs.750/-, on par with the fee for name transfer of service in the case of legal succession. Name transfer of HT service, both for legal succession as well as by sale of property should be pegged at Rs.1000/- per service. The rates fixed for transfer for wind power mill is too high. High amounts has nothing to do with the expenditure involved in providing the service by the TNEB.*

*e) Tamil Nadu Electricity Consumers Association (TECA) noted as to “Whether the name transfer charges for wind energy generators at an incremental rate of Rs.50000/- for each 250 KW incremental capacity are really reasonable.”*

*f) CAG and Mr. V.Rajaraman object to the levy of charges for name transfer of service. They are of the opinion that the levy of exorbitant charges for this simple administrative measure is unnecessary.*

*g) The Tamil Nadu Varthagar Nala Kazhagam and Kudanthai Unavuporul Varthagar Sangam have questioned the rationale for fixing different charges for name transfer due to legal succession and sale. Is it based on any work study or any other accounting method ? Cuddalore District Chamber of Commerce and Industry and Madurai District Public Welfare Association have also raised similar questions and expressed that the charges for name transfer of windmill services is frightening. They recommend a uniform rate of Rs 100 for LT and Rs 500 for HT.”*

6.3. Para 2.4. contains the views of the TNEB on the representation regarding charges for name transfer:-

*“2.4. Regarding the exorbitant rate said to be charged for name transfer of windmill services, it is to be noted that “ some developers who do not have own or subsidiary industry , initially install windmills and claim 80 % accelerated depreciation in income tax and subsequently opt for sale of windmill to another party having own / subsidiary HT industry and seeks approval of the Board for name transfer of the windmill service. Availing of wheeled energy in HT industry results in avoidance of HT tariff (1) rate to the extent of wheeled quantum and causing revenue loss to the Board and providing substantial benefit for the developer. The amount of transaction of windmills worked out to an average of about Rs 180 lakhs to 200 lakhs per 1000 KW capacity. Hence it is considered that a name transfer fee at 0.5 % of the value of the property transacted is reasonable.” For name transfer of service arising out of sale of property, the sale deed has to be scrutinized thoroughly, which is not applicable when the name transfer is due to legal succession. Hence the difference in name transfer charges. Considering the quantum of work involved, this charge cannot be waived.”*

6.4. Para 3.9. of the Order of the Commission on charges for name transfer is reproduced below:

*“3.9. The major issues / objections relate to (i) Whether the levy of exorbitant charges for a simple administrative nature is necessary , (ii) Why should there be a different rate for name transfer due to legal succession and sale (iii) What is the justification and logic for the special treatment of windmills. Whether the name transfer charges for windmills at an incremental rate for each 250 KW incremental capacity is reasonable and (iv) Can a reduction and a uniform rate be considered?*

*TNEB, in their reply to clarifications on this matter, have informed with a working sheet that “ More man power is required for name transfer of service through sale of property than through legal succession due to scrutiny of sale deeds” As regards the windmill services they have replied that “ Some developers, who do not have own or subsidiary industry, initially install windmills and claim 80% accelerated depreciation in income tax and subsequently opt for sale of windmill*

*to another party having own / subsidiary industry and seeks approval of the Board for name transfer of the wind mill service. Availing of wheeled energy in HT industry results in avoidance of HT tariff –1 to the extent of wheeled power, thereby causing revenue loss to the Board and providing substantial benefit to the wind farm developer. The Board has to render frequent services in all such windmill services, that too resulting in loss of revenue. Moreover, review made in some of the cases of name transfer proposals showed that the amount involved in transaction of wind mills worked out to an average of about Rs 180 lakhs to 200 lakhs per 1000 KW capacity. Hence, it was considered reasonable that a name transfer fee at 0.5% of the value of the property transacted be collected “ Commission is not able to appreciate the contention of TNEB that the work involved in the processing of name transfer applications due to legal succession and sale can be so much different. It needs to be noted that the process of name transfer has now been very much simplified. Accordingly, the Commission decides that the charges for name transfer shall be the same irrespective of whether the transfer is due to succession or sale. The hut services, which are categorized as below poverty line group shall be charged at a concessional rate. As regards the windmills, the Commission appreciates the points raised by TNEB regarding the loss of revenue to Board due to the name transfer in certain cases. The Commission agrees with TECA regarding the proposed incremental rate for name transfer, based on incremental capacity. The Commission is also not in favour of totally reversing the existing pattern of name transfer charges. In the context of the above, Commission decides to have a single rate for the name transfer of windmill services.”*

6.5. Schedule 7 of the Order of the Commission prescribes the charges for name transfer. The charges in regard to legal succession and sale of property collected by the TNEB prior to 1-10-2004 are reproduced below:

<b>Sl.No.</b>	<b>Category</b>	<b>Legal succession</b>	<b>Sale of property</b>
<b>III.</b>	<b>Wind Mills</b>		
1.	Upto 250 KW	Rs.50000/-	Rs.50000/-
2.	More than 250 KW to 500 KW	Rs.100000/-	Rs.100000/-
3.	More than 500 KW to 750 KW	Rs.150000/-	Rs.150000/-
4.	More than 750 KW to 1000 KW	Rs.200000/-	Rs.200000/-
5.	More than 1000 KW	Rs.200000 plus 50000 for every additional 250 KW or part thereof	Rs.200000 plus 50000 for every additional 250 KW or part thereof

The TNEB proposed to retain the same charges. The Commission, on the other hand decided to prescribe a uniform charge of Rs. one lakh per service connection irrespective of the capacity of the wind mills as charges for effecting name transfer in regard to legal succession and sale of property.

6.6. We would like to observe that change of name of a company in accordance with Section 21 of the Companies Act 1956 does not amount to legal succession or sale. It prescribes the procedure for registration for name change as below:

*“A company may, by special resolution and with the approval of the Central Government signified in writing, change its name:*

***Provided** that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word “Private”, consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.”*

6.7. It is evident that what has been proposed by the TNEB and approved by the TNERC is the charge relating to legal succession or sale of property and that the change of name under Section 21 of the Companies Act 1956 is not covered under the above category and therefore the charge of Rs.one lakh per service connection levied by the TNEB is

liable to be set aside. Section 23 of the Companies Act 1956, which deals with the effect of change of name is reproduced below:

*“23(1) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.*

*(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.*

*(3) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.”*

6.8. Section 23(3) of the Companies Act 1956 makes it clear that the change of name shall not affect any rights or obligations of the Company, or render defective any legal proceedings by or against it and any legal proceedings which might have been continued or commenced by or against the Company by its former name may be continued by or against the company by its new name.

6.9. We conclude that the Order of the Commission does not prescribe any charge for these categories namely change of name.

## **7. Conclusion**

The charges levied by the TNEB in Lr.No.CE/NCES/SE/EE/60/WPP/AEE3/F.M/S.KLRF Ltd., D/1350//08 dated 7-1-2009 as if they relate to legal succession or sale of property are set aside. The respondent Board is directed to refund the charges if any collected from the petitioner Company. It is further directed that there will no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under Section 21 of the Companies Act 1956. Mere corrections have to

be carried out in the existing agreements as stipulated in Section 23 of the Companies Act 1956. If the distribution licensee desires to levy a charge for mere name change, they may file a petition before the Commission.

**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.

With the above directions D.R.P. No.2 of 2009 is finally disposed off. No costs.

Pronounced in the open court by this Commission on this 26<sup>th</sup> day of August 2009.

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

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

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission