

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

PRESENT :

Thiru S. Kabilan - **Chairman**

Thiru R. Rajupandi - **Member**

and

Thiru K. Venugopal - **Member**

M.P. No. 19 of 2009

Date of hearing – 3-12-2009

Date of Order -.25-2-2010

Tamil Nadu Spinning Mills Association
No.24, 11th Cross Street
Thiruvalluvar Nagar
Spencer Compound
Dindigul-624 003
Rep. by its Chief Advisor
Mr. K. Venkatachalam

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Petitioner
Counsel for petitioner
Thiru R.S. Pandiaraj

Vs.

Tamil Nadu Electricity Board
No.144 Anna Salai
Chennai – 600 002
Rep. by its Chairman

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Respondent
Counsel for Respondent
Thiru H.S. Mohammed Rafi

The above M.P.No.19 of 2009 came up for final hearing on the 3rd December 2009. The Commission upon perusing the above petition and connected records and after hearing both sides pronounces the following:

ORDER

1. Prayer

The prayer in M.P.No.19 of 2009 is to punish the Respondents for non-compliance of orders made in M.P.No.42 of 2008 dated 28-11-2008 under Section 146 of the Electricity Act, 2003 in so far as the matter relates to revision of demand and energy quota for wind mill captive consumers and the treatment of banked energy as on 31-3-2009.

2. Facts of the case

The Respondent Board filed a petition M.P.No.42 of 2008 before the Commission and after the due process of public hearing etc., the Commission issued a detailed order on 28-11-2008, covering all aspects. The order issued on 28-11-2008 in M.P.42 of 2008, inter-alia stipulated as follows:

- i) The energy banked as on 01-11-2008 in respect of the windmill captive consumers, should be allowed to be adjusted in 5 monthly installments from 12/2008 to 04/2009.
- ii) The WEG captive consumers should be treated at par with other captive power producers and accordingly, their energy quota and demand quota should be revised in suitable manner.

3. Contentions of the petitioner

- a. The Respondent Board has not complied with the orders of the Hon'ble Commission issued on 28-11-2008 in M.P.No.42 of 2008 and thereby, the Respondent Board is liable for punishment under Regulation 38 (1) of Conduct of Business Regulations, 2004 of TNERC.

- b. The Respondent Board has also violated the mandatory provisions as contained in Section 146 of the Electricity Act, 2003 and hence liable for punishment as contemplated under the above Section for such non-compliance.

4. Contentions of the Respondent Board in the Counter-affidavit

- (i) For levying extra charges for exceeding the demand and energy, the petition MP No.42 of 2008 was filed by the Board before Hon'ble TNERC.
- (ii) As the power position deteriorated further, after passing of the said order by the TNERC, the Board was constrained to approach the Hon'ble High Court, Madras and obtained an order of interim stay in W.P. No.20890 of 2008, till 31st March 2009.
- (iii) Even though the Hon'ble TNERC was pleased to issue the above directions, due to the prevailing power crisis, the above direction could not be implemented by the Respondent Board within the time. At the time, when the order of TNERC was issued, the power cut was at 40%. Due to some improvement in the power situation, the Board has taken steps to implement the order in Para (26) and issued circular on 04-08-09 by sending working instructions to all the field Superintending Engineers/EDCs vide the Memo No. CE/Comml/EE/DSM/AEE/PMM/F.PowerCut/ D.348/09, dated 04-08-09. Further with regard to para (24) of the order in M.P.No.42 of 2008, the Board on 21-08-2009 issued separate instructions to all field Superintending Engineers / EDCs vide Memo No. CE/Comml/EE/DSM/AEE/PMM/F.Power Cut/D.359/09, dated.21-08-09. Since there had been some delay in the implementation of the above two directions, some of the aggrieved parties filed a writ petition before the Hon'ble High Court of Madras praying for a stay on levy of extra charges for exceeding the quota limit. In

W.P.No.12448 of 2009, filed by Indian Wind Power Association, the Board submitted that the above two directions of the Hon'ble TNERC has been implemented vide instruction dated 04-08-2009 and 21-08-2009. Since the Association objected to the method of calculation of extra charges contained in the said instructions, the Hon'ble High Court of Madras referred the above matter to the Hon'ble TNERC in its order dated 28-08-2009 made in W.P.No.174679 of 2009 (Batch).

- (iv) Since the Board has already implemented the directions of the TNERC in instructions dated 04-08-09 and 21-08-09 issued to all the field Superintending Engineers, it is evident that the Board has not violated any of the orders of this Hon'ble Commission. Since the method of calculation indicated in the said instructions was in question and the Hon'ble High Court referred the matter to Hon'ble Commission, the Board was awaiting for the orders of this Hon'ble Commission in this regard.
- (v) This Hon'ble Commission by virtue of the order, dated 28-10-2009 in Suo Motu Proceedings No.1 of 2009 has issued various instructions after setting aside the circular dated 04-08-2009 and 21-08-2009.
- (vi) By virtue of the issuance of the instructions by the Board in Memo. dated 25-11-2009, the import of the order as contained in the order, dated 28-11-2008 in M.P.No.42 of 2008 has been complied with excepting the direction contained in Sl.No.7 and 15 of the order dated 28-10-2009 in Suo Motu Proceedings No.1. The Board is taking steps to file an appeal. Hence the allegation of the petitioner that the order, dated 28-11-2008 in M.P.No.42 of 2008 has not been complied with is denied. Besides, it is submitted that the above petition has been filed after issue of the instructions by the Board to the field officers on 04-08-2009 and 22-08-2009 to implement the orders of this Hon'ble Commission dated 28-11-2008

and before passing of the further orders passed by this Hon'ble Commission on 28-10-2009 in Suo Motu Proceedings No.1 of 2009. In view of the above, nothing survives in this petition and as such the same is liable to be dismissed as devoid of any merit.

5. **Findings of the Commission**

5.1. The prayer of the petitioner is to punish the Respondent under Section 146 of the Electricity Act, 2003 in regard to the violation of the Order of the Commission in M.P. No.42 of 2008 delivered on 28-11-2008 regarding revision of demand and energy quota for wind mill captive users and treatment of banked energy.

5.2. The Order of the Commission dated 28-11-2008 in M.P. No.42 of 2008 was stayed by the High Court of Madras. The High Court in its final disposal on 30-3-2009 gave further time of four weeks to the TNEB for filing an appeal before the Appellate Tribunal for Electricity and therefore virtually the stay operated upto 30th April 2009. Since no appeal was filed by the TNEB, the order of the Commission in M.P. No.42 of 2008 became final and binding on all parties.

5.3. The TNEB has contended that the revision of demand and energy quota has been carried out by them in their orders dated 4-8-2009 and 21-8-2009.

5.4. The demand and energy quota as well as the treatment of banked energy was taken up by the Commission suo moto in October 2009 and final order was issued on 28-10-2009.

5.5. The petitioners have filed this petition for initiation of contempt proceedings on 6th October 2009, five months after the expiry of the stay granted by the High Court of Madras. We do not think any purpose would be served at this stage in initiating proceedings under Section 146 of the Electricity Act, 2003.

6. Direction

The petition is dismissed.

7. 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 45 days.

(K. Venugopal)
Member

(R. Rajupandi)
Member

(S.Kabilan)
Chairman