

**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.K.Venugopal** .... **Member**

**R.P.No.1 of 2010**

In the matter of orders requesting to drop the action initiated against the Member (Generation) in the Hon'ble Commission's Order dated 06-01-2010. Suo-Moto Proceedings No.4 of 2009.

Tamil Nadu Electricity Board  
Rep. by its Member (Generation)  
No.144, Anna Salai  
Chennai – 600 002.

.... Petitioner  
(Thiru.Mohammed Rafi, Advocate for Petitioner)

**Date of hearing 11-06-2010**

**Date of order:17-8-2010**

R.P. No.1 of 2010 along with I.A. No.1 of 2010 came up for hearing before the Commission on 11-06-2010. The Commission upon perusing the petition and connected records and upon hearing the Petitioner passes the following:-

**ORDER**

1. **Prayer in R.P. No.1 of 2010**

The Prayer in R.P. No.1 of 2010 is to review the order dated 06-01-2010 in the matter of violation of section 42 of Electricity Act, 2003 and to exonerate the Member (Generation) for the said violation of

section 42 of Electricity Act, 2003 and to reconsider the imposition of penalty imposed on the Member (Generation).

2. **Prayer in I.A. No.1 of 2010**

The Prayer in I.A. No.1 of 2010 is to condone the delay of 7 days in filing the above review petition.

3. **Contentions of the Petitioner**

(a) The Licensee / Board at no point of time willfully violated or intended to violate any of the provisions of the Regulations as framed by this Commission and the Electricity Act, 2003.

(b) As opined by the then Advocate General of Tamil Nadu, the area not covered by the fifth proviso to section 42(2) of Electricity Act, 2003 is still open to provide such non-discriminatory open access.

(c) Imposing penalty to a senior officer who has not indulged in any such willful actions on his own accord and only to diligently comply with the instruction issued from High level will send a shocking signal to all other officers.

(d) The Board and the Board officials were acting only in consonance with the policy of the Government of Tamil Nadu.

(e) The action taken by TNEB in permitting open access less than 1 MW is not a wanton violation and only a measure taken to tide over the power crisis in public interest.

4. **Findings of Commission in order dated 06-01-2010**

The findings of Commission in paragraph XIV of order dated 06-01-2010 is as follows:-

*“The inescapable conclusion of the Commission is that the Member (Generation) has arrogated to himself the powers of the Commission and illegally granted open access to generators for a load of 0.5 MW for third party sale. The illegality is compounded by the fact that during the pendency of the proceedings before the Commission, the Chairman, TNEB chose to lower the limit for open access from 0.5 MW to 0.25 MW. The Commission believes that these acts*

*constitute flagrant violations of the Electricity Act, 2003 and the Intra State Open Access Regulations 2005, which need to be visited with severe penalty”.*

5. **Arguments**

The Counsel for TNEB, who appeared for Member Generation, TNEB contended that the petitioner should not be held responsible for non-compliance when the matter was decided collectively by TNEB, when queried whether he put forward his views to the Board, the M(G), TNEB said that after this occurrence of non-compliance, he is applying himself to facts of each case independently and in future also, he would do the same. He further contended that the violation was not intentional. He tendered an unconditional apology to the Commission.

6. **Findings of Commission**

(a) The delay is condoned and the Review Petition is taken up for consideration. The Commission has perused the affidavit of the Petitioner in RP.No.1 of 2010. He continues to justify his action in terms of the opinion rendered by the learned Advocate General of Tamil Nadu. He does not anywhere refer to the overruling opinion of the Attorney General of India. He further states that he faithfully implemented the orders of the top management. He repeats his assertion that the decision to lower Open Access below 1 MW was taken in public interest.

(b) We wish to deal with his submission that he acted on orders from the top. When he discharges a statutory duty, he is not bound by instructions from whatever sources he receives. Sections 142 and 146 of the Electricity Act 2003, which deal with contravention of the Regulations of the Commission, clearly state that whoever contravenes the Regulations is punishable. His logic that it is a collective decision of the corporate body is untenable. No individual would ever be accountable for contravention of the law in such a situation. It is the person, who actually commits the violation, who

should be held responsible. In this particular case, it is the Member (Generation). In the Order of the Commission dated 6-1-2010 in the suo motu proceedings No.4 of 2009 the Commission observed as follows:

*“XIII. The Member (Generation) has contended that the open access was lowered by them below 1 MW in public interest. We would like to record here that public interest is not the preserve of the distribution licensee alone. The State Commission is equally charged with this task. Instead of filing a petition before the State Commission for lowering the limit below 1 MW, the Member (Generation) decided to usurp the power of the State Commission conferred by Section 42(2) of the Electricity Act, 2003 and illegally lowered the limit. At no stage, did the State Commission give any indication that it is unwilling or disinclined to lower the limit of open access below 1 MW. The entire judicial process has been short circuited by the Member (Generation).*

*XV. The Commission would like to recollect its orders dated 16<sup>th</sup> May 2008 relating to the contravention of the Order No.2 dated 15-5-2006 and Order No.4 dated 15-5-2006 of the Commission by the then Member (Generation) of the TNEB.*

*“14(1) Section 142 of the Act provides for penalty upto Rs.six thousand per day for continuing contravention. Section 146 provides for criminal prosecution of those charged with contravention. The Commission would like this case to be an example for all licensees and generators, who dare to contravene the orders of the Commission, deliberately and wilfully. On two previous occasions, the TNEB has been let off without any penalty for non compliance of the orders of the Commission. It is time to impose an exemplary penalty on those who seek to defy the authority of the Commission. As this is the first case of penalty, the Commission decides to limit the penalty to Rs. ten thousand each on Member (Generation) and Chief Engineer (Private Power Project). The fine shall be paid within thirty days of the order. The Commission does not wish to seek criminal prosecution of the offenders this time.”*

*“XVI. It is obvious that the functionaries of the distribution licensee have not mended their ways. They persist in their attempts to defy and dare the Commission. Such tendencies and attitudes need to be put down ruthlessly. In view thereof, the Commission decides to impose a fine of Rs. twenty thousand on the Member (Generation). The fine shall be deposited with the Commission within sixty days of the order. Although the wanton violation would justify criminal prosecution, the Commission reserves this option for a future occasion.”*

(c) The Commission observes that this is the second time a Member (Generation) has violated the orders of the

Commission and therefore, no leniency is deserved. The Commission reiterates its order of fine of Rs. twenty thousand. The Review Petition is dismissed. The fine should be deposited within 30 days.

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 forty five days.

(Sd.....)  
(K. Venugopal)  
Member

(Sd.....)  
(S. Kabilan)  
Chairman

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**Secretary  
Tamil Nadu Electricity  
Regulatory Commission**