

**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  
and  
Thiru K. Venugopal - Member

**Reconsideration of R.P. No. 4 of 2006**

**Dates of hearing – 16-6-2009, 22-7-2009, 26-8-2009, 14-10-2009,**  
**29-10-2009, 3-12-2009 and 6-1-2010**

**Date of Order:- 4-5-2010**

The Chairman  
Tamilnadu Electricity Board  
144 Anna Salai  
Chennai-600 002

..... Petitioner  
Counsel for Petitioner  
Thiru H.S. Mohamed Rafi

**vs.**

1. M/s. Netaji Apparel Park  
2. Palladam Hi-Tech Weaving Park  
3. Tirupur Export knitwear Industrial Complex Respondents  
Counsel for Respondents 1 & 2  
Thiru Rengapashyam  
Thiru Raju  
Counsel for Respondent No.3  
Thiru Jayath Muthuraj

R.P. No. 4 of 2006 as remanded by  
the Hon'ble Appellate Tribunal for Electricity for reconsideration came up for

final hearing before the Commission on 6-1-2010. The Commission upon perusing the connected records and after hearing both sides passes the following

## **ORDER**

### **I Facts of the case**

1. This Commission issued an Order T.O.1-77 on 20-3-2006 permitting single point HT supply to Palladam Hi Tech Weaving Park, Netaji Apparel Park and Tirupur Export Knitwear Industrial Complex (TEKIC). The TNEB, aggrieved by this Order, filed a review petition R.P.No.4 of 2006 before this Commission on 11-7-2006. The review petition was dismissed by the Commission on 6-2-2007. The TNEB filed an appeal before the Hon'ble Appellate Tribunal for Electricity (Appeal No.51 of 2008) challenging the dismissal of the review petition. The Hon'ble Appellate Tribunal allowed the appeal and set aside the Order of the Commission dated 20-3-2006. The Commission was directed to re-consider the three representations and pass an Order according to law in the light of the judgement of the Appellate Tribunal. The Appellate Tribunal observed that the revenue loss claimed by the TNEB has not been taken into account in the Order of the Commission dated 20-3-2006.

2. Notice was issued to Netaji Apparel Park, Palladam Hi Tech Weaving Park, TEKIC and the TNEB that their applications and the review petition would be heard afresh. Hearing took place on 16-6-2009, 22-7-2009, 26-8-2009, 14-10-2009, 29-10-2009, 3-12-2009 and 6-1-2010.

## II 1. Written submissions of TNEB

TNEB's contention is briefly as follows:-

a) Law does not permit a consumer to obtain one HT service connection of bulk supply of power to be distributed to shareholders / members.

b) There would be a revenue loss to TNEB as a result of dismantling all lines / equipments without realizing the revenue from the existing consumers by forming a group.

c) Allowing wheeling of NCES based power to single point HTSC would circumvent rules and cause loss to TNEB as it permits wheeling adjustment indirectly to units inside their sites.

d) The loss of revenue to TNEB would be Rupee one per unit.

e) While referring to Section 42 (4) of Electricity Act, 2003 (Act 36 of 2003) (hereinafter shortly referred to as 2003 Act), TNEB contended that in case if the Commission permits the consumer to receive supply from a person other than the distribution licensee, additional surcharge has to be paid.

f) The Commission in letter dated 10-7-2006 to GoTN at para 4-A (iii) accepted the revenue impact to TNEB.

g) Allowing cross-subsidizing category LT Industrial consumers to form themselves into groups to avail HT supply would cause revenue impact to TNEB and it would be difficult for State Government to monitor free / concessional power to the needy.

h) If subsidizing categories of consumers' representations are allowed, then, the present cross subsidy will be reduced and tariff of domestic, agriculture, etc. will have to be increased.

i) The three Respondent Companies are indirectly trying to step into the shoes of the distribution licensee to supply

power to stakeholders / members by obtaining a single HT service of bulk power contrary to Section 12 of 2003 Act.

## **2. Written submissions of the Respondents**

The contention of the three Respondents in their written submissions, which are more or less the same, are briefly as follows:

a) All the loads will be in one and the same complex covered by a compound wall.

b) TNEB gave no objection for the HT supply.

c) There is a gain of 25 paise on HT service.

d) Chairman, TNEB confirmed that the order of the Commission will be implemented as it was without any change.

e) TNEB has to transmit 5000 KVA power and distribute it to LT consumers. Loss to TNEB by providing LT supply is Rs.2,35,46,880/- By providing HT supply to the Respondents, TNEB will gain this amount by way of saving the transmission loss every year.

f) The calculation of loss as estimated by TNEB does not address the following:

- (i) transmission loss in LT transmission;
- (ii) man power expenses to monitor, maintain and service of LT consumers is 20 times more when compared with HT supply
- (iii) capital investment for TNEB to create LT supply

g) HT consumers buy power at 11000 volts while LT consumers at 415 volts. TNEB has to spend money on transmission lines, distribution lines. There would be 20% transmission and distribution loss in the power supply to LT consumers.

h) Co-operative clusters cannot be considered as traders. It is not a business for them.

i) Malwa Industries Judgement dated 6-12-2007 has dealt with the distribution licensee, Section 42 (2) of 2003 Act.

j) No objection letter dated 28-2-2006 prevents the TNEB from objecting the issue of licence. It is only on the letter of TNEB, the Commission has acted upon.

### **3. Contentions specifically applicable to R 1**

a) R1's unit is just like any other co-operative spinning or weaving mill for which single point HT service under HT tariff I – A has been permitted. As of now, there is no proposal for setting up of any wind mill and the question of wheeling power from windmill does not arise.

b) This subject was discussed in High Power Meeting held at TNEB on 25-5-2006. It was agreed to allow the tariff as recommended in the Order of the Commission.

c) As per Order No.3 dated 15-5-2006, only HT services are allowed to wheel power and R1 which is having HT service connection is eligible to wheel power as per the said order.

d) R1 has given 2 acres of land to TNEB for sub-stations.

### **4. Contentions specifically applicable to R2**

a) Since R 2 are not going in for wheeling power, the net loss prejudiced by TNEB is hypothetical and not factual.

b) The entire power consumed is near the 110 KV sub-station and hence the transmission losses are very minimal.

c) If the facility of availing bulk power supply of HT connection is withdrawn, then the financial problems of R 2 would be great.

**5. Contentions specifically applicable to R 3**

a) R 3 is just like any other co-operative spinning or weaving unit for which single point HT service under HT tariff I A has been permitted.

b) TNEB is estopped from setting up the impediment to the implementation of the orders of this Commission dated 20-3-2006 because TNEB was involved at every stage.

c) R 3 does not fall under the provisions of 2003 Act necessitating a distribution licence since the requirement of electricity is for the consumption by the members of the co-operative society at the same tariff rate in the same area bound by a compound wall.

**6. Reply affidavit of TNEB with reference to R 1**

(a) The end users of the single point HT supply are 53 number of members of the Respondent Society and not a single user and as such R 1 falls under the purview of Section 12 of Electricity Act, 2003 and a licence under the said Sec 12 is necessary.

(b) The TNEB has executed works in regard to 11 KV line for a distance of 0.973 KM, 1 No. double pole structure with 11 KV 200-100 5-A meter set, establishment of a new 110/11 KV sub-station at Netaji Apparel Park and strengthening of conductor size while effecting additional demand to R1.

(c) The statement made by R 1 that the establishment of the wind mill has not been thought of now clearly indicates the Respondent's intention for future establishment.

(d) If wheeling of wind mill power is permitted to one such HT service the revenue loss to the petitioner will be Rs.1.01 per unit.

(e) Though R 1 availed single point high tension supply, their 53 members are utilizing the energy supplied by Petitioner Board. R 1 is utilizing energy consumption around 5.5 to 6 lakhs

units per month and the Petitioner Board will have to lose around Rs.5.56 to Rs.6.1 lakhs monthly (approximately)

(f) The averment of R 1 in so far as the savings to Board is not correct. By availing the transmission infrastructure facilities of the petitioner Board, the Respondent 1 is utilizing the same to distribute the energy to its members.

(g) Eventhough the cost of HT supply is less than the LT cost of supply, the rate of realization is more in LT Industries than that of HT Industries.

(h) LT supply effected with the petitioner's area is within 0.5 km radial distance and therefore the transmission and distribution loss is very low. As such the averment of R1 that there is a gain by HT supply is not correct.

(i) The line loss of Rs.2.35 crores at 12% as alleged by R 1 is untrue. The line loss has a correlation with the distance of point of supply. As the line loss is dependent on the distance of supply, adopting a uniform percentage of 12 is unrealistic.

## **7. Reply affidavit of TNEB with reference to R 2**

a) The endusers of the single point HT supply are 28 and other proposed 62 numbers of the Respondent Society and not a single user. R 2 falls under the purview of Section 12 of the Electricity Act and licence is necessary.

b) TNEB executed the works such as erection of 11 KV line for a distance of 100 metres, erection of 1 No. DP structure with 11 KV 60-30 / 5 A metering set for extending of HT supply, dismantling 6 nos. distribution transformers along with HT / LT lines and 12 nos. LT service, changing of 11 KV, 60-30 / 5 A metering set to 11 KV, 100-50 / 5 A. The TNEB has to dismantle all its lines equipments by incurring an unproductive expenditure without realizing the revenue return from the existing LT consumers who have formed a group and availed single point HT supply.

c) The statement of R 2 that the establishment of windmill has not been thought of now clearly indicates the Respondent's intention for future establishment.

d) If wheeling of windmill power is permitted to one HT service the loss of revenue to the Petitioner Board will be Rs.1.01 per unit.

#### **8. Reply Affidavit of TNEB with reference to R 3**

a) The end users of R 3 are 200 members / shareholders and not a single user. Therefore, unless a license under Section 12 of Electricity Act, 2003 is obtained, the request of R 3 is not maintainable and the law does not permit R3 solely to distribute the electricity obtained for single HT supply.

b) With reference to R 3, the TNEB executed works relating to dismantling of 34 no. distribution transformers of various capacity totaling 11 – 75 MVA along with structure, erection of 11 KV 3 x 300 80 mm UG cable for a distance of 0.28 kms, laying of new 11 KV line for a distance of 0.040 km. and strengthening of 11 KV lines for a distance of 0.261 km.

c) Allowing wheeling of wind power to such single point HT service connection would amount to circumvent the rules and cause revenue loss to Petitioner Board.

d) There would be a revenue loss of Rs.1.01 per unit approximately if wheeling of wind mill power is permitted to one such HT service of R 3.

e) Though R 3 availed single point HT supply their 200 members are utilizing the energy supplied by Petitioner Board. R 3 is utilizing energy consumption around 8 to 10 lakhs units per month and this would put the Petitioner Board to incur loss around Rs. 8 to 10 lakhs monthly (approximately)

f) The single point HT power supply in the case of R 3 has been extended to BSNL tower, Reliance tower, Tata Tower, Vodafone Tower and water works of M/s. New Tirupur Area Development Ltd. who are not members of R 3.

g) The rates levied by R 3 on their members is Rs.5.30 per unit which is more than the rates charged by the Petitioner and R 3 is violating the orders of this Commission.

h) The statement of R 3 that the land for the sub-station has been provided free of cost is not correct. The Petitioner states that as per Clause 29 (12) (ii) of Tamil Nadu Electricity Distribution Code, for the requirement of electrical supply for more than 5 MVA, the land has to be made available free of cost by the intending consumer. The ultimate demand of R 3 is expected to be more than 5 MVA but the Petitioner has paid the cost of the land at the prevailing rate and then only extended the single point supply.

i) No extra manpower is needed to monitor and maintain the LT supply if given to the R 3. The existing man power available at TNEB is enough to manage the work in R 3's complex.

**9. Rejoinder of R 1 with reference to the reply affidavit of TNEB**

(a) All the electrical installation works are executed well within the underground basis with UG HT cable along with latest type of transformers on the total area of 170 acres to maintain the apparel park as in international standards. The maintenance and overhead cable system of TNEB will not be allowed inside the park and it will spoil the standards and as said by SE, Tirupur with single AE and foreman of sub-station cannot maintain as whole area which is technically updated system installed by R 1.

(b) R 1 do not have any windmill facility in their Netaji Apparel Park and as such the Petitioner's statement about the windmill does not apply to R 1.

(c) The line loss per month average of 6 to 5 per cent at an average of Rs.0.24 per unit are incurred by R 1 and R 1 have installed the capacitors to save their equipments, machineries and the point of reduction in line loss is very meagre.

(d) As per Board norms the land cannot be given free of cost nor can be gifted. R1 are ready to return the feeble sale price paid to them by TNEB.

(e) The reply affidavit submitted by TNEB raises many questions as to the identity of the maker of the affidavit and the affidavit is an invention of after thought only to prolong the proceedings and to take the Commission beyond the purview of the real law before the Commission.

**10. Rejoinder of R 2 with reference to the reply affidavit of TNEB**

(a) The reply affidavit dated nil of the TNEB though prepared as early in September 2009, it was, for the reasons best known to Petitioner, served upon R 2 only on 14-10-2009 at 12.40- p.m. i.e. the date of hearing.

(b) The question of surrendering all the existing services and dismantling of the already created infrastructure of the Board does not arise in respect of R 2. TNEB has not given any intimation about the cost of dismantling the LT connections and why they have not collected dismantling charges earlier is unknown to R 2.

(c) There is no proposal for setting up of any wind mill and the question of wheeling from the wind mill does not arise now and TNEB's statement of possibility of future wheeling arrangement is only an assumption and it is untrue.

(d) R 2 reiterates that they do not charge more than the bill amount to their members.

(e) R 2 is ready to refund the sale price to TNEB for the 1.08 acres of land given to TNEB towards the land value.

(f) R 2 have spent Rs.20,65,44,370/- towards infrastructure cost alone out of which, amount spent towards electrical works is Rs.5,50,33,780/-

**11. Counter statement of TNEB with reference to R 1's rejoinder**

(a) R 1 has spent Rs. Eleven crores and eighty three lakhs for erection of UG distribution system equipment cables at Netaji Apparel Park. The cost difference in extension works is ten crores and seventy eight lakhs and fifty thousand and one hundred and eighty only.

(b) R 1 spent Rs. One crore and thirty five lakhs and thirty seven thousand and eighty eight for EMD Development charges, service connection charges and MCD charges for single point HT service connection as per TNERC Miscellaneous Charges.

(c) If the above services are effected individually as 52 LT services for the 52 sheds, the amount to be payable is Rs.58,30,200/-

**12. Counter statement of TNEB with reference to R 2's rejoinder**

(a) R 2 has spent Rupees five crores and fifty four lakhs and ninety seven thousand and four only for erection of UG distribution system, equipment cables at Palladam Hitech Weavers Park premises. The cost difference in extension works is Rupees four crores and ninety four lakhs and twelve thousand and four only.

(b) R 2 has spent Rs.24,98,170 for EMD development charges, service connection charges and MCD charges for single point HT service connection as per TNERC Miscellaneous charges.

(c) If the above services are effected individually as 90 LT service connections for the above 90 sheds of R 2, the amount to be payable to TNEB for all 90 LT service connections is

Rs.67,06,800/- Hence by way of effecting single point HT supply instead 90 LT SCs, the difference of the cost is Rs.42,08,630/-

**13. Counter statement of TNEB in the case of R 3**

(a) R 3 has spent Rupees four crores and seventy eight lakhs and thirty five thousand for erection of UG distribution system, equipment cables at Tirupur Export Knitwear Industrial Complex premises. The cost difference in extension works is Rs.2,97,37,040/-

(b) R 3 has spent Rs.1,10,96,000/- for EMD, development charges, service connection charges and MCD charges for single point HT service connection as per TNERC Miscellaneous charges.

(c) If the above services are effected individually as 194 LT service connections for the above 194 sheds of R 3, the amount to be payable to TNEB for all 194 LT service connections is Rs.1,43,68,880/- Hence by way of effecting single point HT supply instead 194 LT SCs, the difference of the cost is Rs.32,72,880/-

**III Re-visit of Order dated 20-3-2006 and findings of the Commission**

1. We have re-visited the Order of the Commission dated 20-3-2006. The TNEB in their letter dated 28-2-2006 stated that they have no objection in granting a distribution licence to Netaji Apparel Park and Palladam Hi-Tech Weaving Park. This recommendation of the TNEB has to be read along with the Sixth Proviso to Section 14 of the Electricity Act 2003 and Rule 3 of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, creditworthiness and code of conduct) Rules 2005 framed by the Government of India under Section 176 of the Act extracted below:

Proviso to Section 14 of Electricity Act, 2003

*“Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements [relating to the capital adequacy, creditworthiness, or code of conduct] as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose.”*

Rule 3 of Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, creditworthiness and code of conduct) Rules 2005

**“3. Requirements of capital adequacy and creditworthiness – (1)**  
*The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of Section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of Section 43.*

*(2) The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of the networth and generation of internal resources of his business including of promoters, in the preceding three years after excluding his other committed investments.*

*Explanation – For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to Section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243 (Q) of the Constitution of India or a revenue district shall be the minimum area of supply.”*

It is clear that the applicants do not fulfil the territorial limit prescribed in Rule 3 and therefore grant of the status of a distribution licensee, as recommended by the TNEB, to the applicants is ruled out. We are constrained to admit that the Order of the Commission granting single-point HT service connection to Netaji Apparel park, Palladam Hi-Tech Weaving Park and TEKIC was based on erroneous interpretation of the Electricity Act, 2003.

2. We would like to touch upon the claim of the TNEB that they have been subjected to revenue loss by the Order of the Commission. This claim is not borne out by facts. The TNEB submitted that if wheeling of power is allowed to a HT service connection the following revenue loss will be faced by them:

- |    |   |                  |
|----|---|------------------|
| 1) | Energy charge normally realised by TNEB   | Rs.3.50 per unit |
| 2) | Energy charge for wheeled wind power  | Rs.2.70 per unit |
| 3) | Loss to TNEB – 80 paise per unit  |                  |
| 4) | Loss on account of deemed demand charge of wind generators – 20 paise per unit. |                  |
| 5) | Direct loss due to tariff – 1 paise per unit                                    |                  |
| 6) | Total loss – Rs.1.01 per unit   |                  |

3. This argument of the TNEB is fallacious because the alleged loss to the TNEB is more than off-set by the saving in cost. The cost of service for the year 2008-09 for a LT consumer is Rs.4.63 per unit, whereas cost of service for a HT consumer is Rs.3.53 per unit. The TNEB saves Rs.1.10 per unit in granting a HT service connection.

4. The contention of the TNEB that wheeling of wind energy to the consumers, who were all LT consumers originally, would cause loss to the TNEB is no more valid. The Commission in Order No.1 of 2009 dated 20-3-2009 has extended the benefit of wheeling to LT consumers also in addition to HT consumers. This Order of the Commission has not been contested and has become final and binding on all.

5. Here again, we need to bear in mind that TEKIC is the only consumer out of the three, who has availed wheeling of wind energy and therefore energy loss of Rs.1.01 per unit would apply only to them. In regard to the other two consumers namely Palladam Hi Tech Weaving Park and Netaji Apparel Park, who have not established captive wind generation, the alleged loss would be only 1 paise per unit. It is thus clear that the TNEB stands to gain 9 paise per unit in the case of TEKIC and Rs.1.09 per unit in the case of Netaji Apparel Park and Palladam Hi Tech Weaving Park.

6. While we would have liked to restore status quo ante as on 20-3-2006, we need to recognize the fact that much water has flown under the bridge since then. The LT distribution network of the TNEB has been dismantled and TNEB has been suitably compensated by the three applicants for this. The three applicants have invested in establishing their own distribution network. TNEB has stated in their counter that Netaji Apparel Park has spent Rs.11.83 crores for setting up a distribution system. Further Rs.111 lakhs has been spent towards development and service connection charges for establishing a HT connection, which is an irreversible expenditure. TNEB has stated in their counter that Palladam Hi-tech Weaving Park have spent Rs.5.5 crores for setting up a distribution network and spent nearly Rs.25 lakhs as service connection charges and development charges which cannot be recovered. TNEB has stated in their counter that TEKIC have spent Rs.4.78 crores for

setting up a distribution network. Further, they have compensated the TNEB by Rs.54 lakhs towards dismantling charges and spent Rs.16 lakhs towards service connection and development charges, which are irreversible.

#### **IV Directions**

Considering the huge effort involved in dismantling the network established by the TNEB and installation of fresh distribution network by Netaji Apparel Park, TEKIC and Palladam Hi-Tech Weaving Park and considering the money spent in these efforts, we direct that the three beneficiaries may continue to retain their single point HT status as an exception. The Tariff Order T.O.1-77 dated 20-3-2006 stands withdrawn with immediate effect.

#### **V Merger of Interim Order**

The interim order dated 3-12-2009 is merged with this order.

#### **VI 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.

With the above directions, reconsideration of R.P.No.4 of 2006 is finally disposed of. No costs.

(Sd.....)

**(K. Venugopal)**  
**Member**

(Sd.....)

**(R. Rajupandi)**  
**Member**

(Sd.....)

**(S. Kabilan)**  
**Chairman**

**/ True Copy /**

**Assistant Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**