

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.K.Venugopal **Member**

Thiru. S. Nagalsamy **Member**

D.R.P. No. 11 OF 2010

Sulochana Cotton Spinning Mills Pvt., Ltd.,
424, 426, Kamaraj Road
Tirupur – 641 604.

.... Petitioner
(Thirumathi. Pushpa Sathya Narayanan,
Advocate for Petitioner)

Vs.

1. Tamil Nadu Electricity Board
Rep. by the Chairman
144, NPKRR Maaligai
Chennai – 600 002.
2. The Superintending Engineer
Coimbatore Electricity Distribution
Circle/South/Coimbatore. ... Respondents
(Thiru.H.S. Mohammed Rafi, Advocate for Respondents)

Dates of hearing 21-10-2010, 29-10-2010, 7-12-2010 & 5-1-2011

Date of order 20-1-2011

The D.R.P.No. 11 of 2010 came up for final hearing before the Commission on 5-1-2011. The Commission upon perusing the above

D.R.P.No.11 of 2010 and other connected records and after hearing both sides passes the following:-

ORDER

1. **Prayer in D.R.P. No. 11 of 2010:-**

The prayer of the petitioner in the above case is –

(a) to set aside the order passed by the TNEB in Lr. No.SE/CEDC/CBE/AO/Rev/HT SC No.170/D320/2010 dated 23-3-2010.

(b) direct the respondent board to adjust the unutilized banked units in the subsequent bills.

2. **Facts of the case :-**

2.1. The petitioner company, a wind mill generator, entered into an agreement with the TNEB on 28-3-2004. As per the agreement the petitioner company would generate power by installing a wind mill of 750kw capacity at SF No. 117/2, of Gomangalam village, Pollachi Taluk, Coimbatore District on condition that the WEG will be tied up with board's Grid through 22kv network. They are permitted to wheel the energy generated to their HT SC No.170 of Coimbatore EDC/South and to bank the surplus energy after adjustment.

2.2. Clause 3 of the agreement reads : "The banking period shall be from 1st April to 31st March of the financial year, after which any unutilized banked energy shall be deemed to have lapsed at the end of the financial year".

2.3. Clause 19 of the agreement provides as follows:

“The company agrees that the power generated by the wind mill generator is to be adjusted in one month consumption only on energy to energy basis as per orders in force from time to time. The unutilized surplus power available after adjustment shall be either sold to the board at the purchase rate of Rs.2.70 per unit or to be banked. It is further agreed that if the energy generated towards export unit in Wind Electric Generator is lesser than the energy drawn towards import unit, than the balance import energy shall be charged at the Industrial HT Tariff 1 rate during the month....”

2.4.The petitioner subsequently entered into Energy Wheeling Agreement on 6-11-2009, which would be applicable from the date of the agreement. Clause 6 of the agreement deals with billing. As per clause 6(b) wherever wind energy generation is in excess of the consumption the balance energy shall be banked. The banked units are normally carried forward for adjustment in the subsequent bill.

2.5. It was noticed by the petitioner that the banked units as on 31-8-2005 were not carried forward for adjustment in the subsequent bill. As the board omitted to include the banked units in the subsequent bill the petitioner claims that he was under the bonafide impression that there were no unutilized banked units for that month.

2.6. The petitioner sent a letter on 11-6-2009 to the Account Officer, TNEB, Coimbatore / South and to the SE, Tirupur requesting for inclusion of omitted banked units with reference to the EB bill No.107 dated 2-9-2005 and 1-10-2005 for the unadjusted 2,36,996 banked units. Though the Board specifically admitted that the balance units had been omitted to be adjusted during 2005-06, refused to adjust the same contending that the same had lapsed on 31-3-2006 as per the terms of the wind mill agreement. The reply further read that the period of limitation stipulated by TNERC in clause 21(2) that no sum shall be recoverable beyond a period of 2 years from the date on which such sum become due. Therefore, the request was rejected.

2.7. The petitioner again represented to the Board making it clear that the omission was on the part of the Board and that there is no provision in the agreement that the balance unit omitted to be adjusted during 2005-06 would lapse after 2 years. The Board had sent a reply in the impugned letter No.SE/CEDC/S/CBE/AO/Rev. /HT SC No.170/D.320/2010 dated 20-3-2010 informing that the balance unadjusted energy has not been claimed within the period of 2 years and as per the limitation Act.

3. Contentions of the Petitioner:-

3.1. The Board having omitted to adjust the banked units is estopped from stating that the claim of the petitioner is time barred.

3.2. The negligence on the part of the Board should not jeopardize the interest of the petitioner.

3.3. The Board cannot be allowed to take advantage of their own lapse.

3.4. When the agreement is in force the cause of action is continuous and the question of limitation does not arise.

3.5. The doctrine of waiver could not be applied to the petitioner company as its claim is raised immediately after the knowledge of the omission.

4. Contentions of the Respondent Board in Counter Affidavit filed by them:-

4.1. As per the terms of the wheeling agreement the banking period is from first April to 31st March, after which any unutilized banked energy shall be deemed to have lapsed at the end of the financial year.

4.2. As per para 10 of BP (FB) No. 101 dated 09-05-2005 the unadjusted energy at the end of the banking year will be treated as lapsed for all slots.

4.3. There were 2,36,995 units of wind mill energy available at banking after adjustment against the Industrial consumption of HT SC 170 as on 31-8-2005. The available banked units as at 31-8-2005 had been inadvertently omitted to be carried forward for adjustment for the immediate next

billing i.e for the month September 2005 and also for the subsequent month during 2005-06.

4.4. The mistake occurred as on 31-8-2005 could have been brought to the notice on receipt of the HT bill for September 2005. The petitioner failed in this regard and paid the bill of September 2005 without any protest or objection.

4.5. While the inadvertent omission occurred and continued upto the end of banking period the petitioner had not brought it to the notice of the respondents to take appropriate steps within the limitation period of 2 years under regulation 21(2) of the Tamil Nadu Electricity Supply Code but made the claim on 11-6-2009 i.e after 3 years and 2 months from the end of banking period.

4.6. Had this inadvertent omission been brought to the notice of the respondents within the banking period or even within the limitation period rectification could have been made as per regulations of Tamil Nadu Electricity Supply Code.

4.7. The petitioner having failed to exercise his right within a reasonable period of time is deemed to have waived his right to claim for the unutilized banked units.

5. **Findings of the Commission:-**

5.1. The electricity bill of TNEB for the month ending 31-8-2005 showed that the banked energy as on 31-8-2005 was 2,36,996 units. The manual entries adopted up to the bill for the month of August 2005

appears to have been changed to computerized entries with effect from 1st September 2005. Thus, the bill for the month of September 2005 dated 1-10-2005 did not show the balance of banked energy as on 30-9-2005. This procedure continued thereafter. Therefore, the generator / consumer did not have the benefit of banked energy being shown in monthly bills.

5.2. A vigilant generator / consumer would have woken up when the bill for September 2005 or even a later bill of October 2005 did not indicate the banked energy at the close of the month. The petitioner claims that the auditors of the company drew their attention to the lapse of 2,36,996 units which was shown as the banked energy as on 31-8-2005. The audit of the accounts of the company should have taken place during the following year i.e. during 2006-07. As per clause 3 of the agreement executed on 28-3-2004 between the petitioner / generator and the TNEB the banking period shall be from 1st April to 31st March of the financial year, after which any unutilized banked energy shall be deemed to have lapsed at the end of the financial year. As per the agreement, 2,36,996 units, which was shown as banked energy as on 31-8-2005, was not utilized during the year 2005-06 and therefore should have normally lapsed on 31-3-2006.

5.3. There is no explanation or justification furnished by the petitioner as to why he slept over his rights of utilizing banked energy of 2,36,996 units between 31-3-2006 and 11-6-2009, the date on which the petitioner represented to the Superintending Engineer, TNEB. The delay of

the petitioner in agitating his claim was 3 years and 3 months. The present petition before the Commission has been filed on 30-8-2010.

5.4. The Commission has all along held that while limitation would not apply to proceedings before the Commission, delay and laches would apply. We are not convinced as to why the petitioner slept over his rights for 3 years and 3 months. The delay has neither been explained nor justified. In the result, the Commission holds that the claim is belated and has to be rejected.

6. Order:

In view of the findings of the Commission in para 5 above, the D.R.P.No.11 of 2010 is dismissed. No order as to costs.

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.

(S. Nagalsamy)
Member - II

(K.Venugopal)
Member - I

(S.Kabilan)
Chairman