

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
 and

Thiru.S.Nagalsamy Member

D.R.P. No. 14 of 2010

Dates of hearing: 04-01-2011 & 14-03-2011

Date of Order : 14-03-2011

Durgesh Nandhini Spinning Mills
 HT SC No.52
 Cumbum Road
 Theni

.... Petitioner
 (Thiru. R.S.Pandiyarajan, Advocate for Petitioner)

Vs.

1. The Chief Financial Controller (Revenue)
 Tamil Nadu Electricity Board
 800, Anna Salai
 Chennai – 600 002.

2. The Superintending Engineer
 Theni Electricity Distribution Circle
 Tamil Nadu Electricity Board
 Theni.

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

D.R.P.No.14 of 2010 came up for final hearing before the Commission on **14-03-2011**. The Commission upon perusing the above D.R.P.No.14 of 2010 and other connected records and after hearing both sides passes the following:-

ORDER

1. **Prayer in D.R.P. No.14 of 2010:-**

To pass an order setting aside the impugned notice dated 06-09-2010 issued by the Second Respondent as illegal, arbitrary, without the authority of law and against the orders of the Hon'ble Tamil Nadu Electricity Regulatory Commission made in Suo Motu Proceedings No.1 of 2009 dated 28-10-2009 and consequently direct the Second Respondent to refund a sum of Rs.2,64,925/- with interest at the rate of 18% per annum from 06-07-2010 to till the date of payment and pass such further or other orders as the Hon'ble Commission may deem fit and proper.

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

2.1 The Petitioner owns wind mills in the Tirunelveli Electricity Distribution Circle with HT WEG SC No.1786, 1792, 1794 and 1795 producing electricity therefrom and exporting to the Respondents TNEB at the above circle for the purpose of captive consumption of the Petitioner. The Petitioner has HT SC No.52 in their Textile Spinning Mills coming under the Second Respondent.

2.2 The Second Respondent has fixed demand and energy quota to the Petitioner vide his letter dated 28-06-2010 as follows for the month of July 2010:

	Normal hours	Peak hours
Energy quota	421308 Units	117200 Units
Demand quota	764 KVA	764KVA

The actual generation from the Petitioner's wind mills for the month of July, 2010 is as below:-

	Normal hours	Peak hours
Energy	550821 Units	106953 Units
Deemed Demand	927 KVA	900KVA

The actual consumption of the Petitioner for the month of July 2010 is as below:

	Normal hours	Peak hours
Energy	307764 Units	68640 Units
Demand	754.44 KVA	701.28 KVA

The Petitioner has stated that he has not exceeded the demand and energy quota fixed by the Second Respondent vide his letter dated 28-06-2010 and limited his consumption within the quota.

2.3 The Second Respondent raised their Bill No. 52 dated 31-07-2010 in which under column No. 14 (a), (b) and (f) has levied a penalty of Rs.1,21,059.40, Rs.79,317.60 and Rs.65,548.00 respectively, totaling Rs.2,64,925.00 as penalty for excess consumption of energy and demand during both peak and normal hours without any basis.

2.4 The Second Respondent did not give an opportunity to the Petitioner to verify as to how the penalty calculation has been arrived at. On the other hand, he has straight away included in the current consumption bill for the month of July, 2010 under threat of disconnection if the amount is not paid within the due date i.e. 06-08-2010.

2.5 The Second Respondent without informing the Petitioner has adjusted the above penalty amount also in the Current Consumption Deposit available with the Second Respondent. The Petitioner seeks refund of the adjusted amount.

3. **Contentions of the Petitioner:-**

3.1 The Petitioner is a H.T. Consumer and therefore falls within the scope, definition and meaning of the term “consumer” as stipulated in Section 2 (15) of the Electricity Act, 2003. They are using the electrical energy to run their machines which are installed in their various processes.

3.2 Since wind mill generation is an infirm power depending upon the availability of wind in a particular season, the above proposed energy would be only tentative / rough. Therefore, that does not mean that it should be taken as a firm commitment and penalty / excess charges could be levied for the consumption over and above the proposed energy as indicated by the wind mill captive users.

3.3 The Second Respondent has failed to give any opportunity to the Petitioner before raising the impugned amount in the Bill No. 52 dated 31-07-2010 or put on notice to the Petitioner as to the proposed levy of penalty and the basis for such levy. He has straight away raised the bill.

3.4 The impugned demand raised in Bill No. 52 dated 31-07-2010 by the Second Respondent in so far as it relates to levy of penalty / excess charges for the alleged excess demand and energy quota is liable to be set aside since the Petitioner has not violated the provisions as contained in the Suo Motu Proceedings No. 1 of 2009 dated 28-10-2009 issued by the Tamil Nadu Electricity Regulatory Commission and same order does not contemplate any penalty for shortfall in the estimated generation.

3.5 The Petitioner has given a representation to the Second Respondent for refund of the above amount. Since there was no response from the Second Respondent, the Petitioner has approached the Madurai Bench of the Hon'ble High Court of Madras by filing Writ Petition No. 10799 of 2010 seeking mandamus to dispose of the representation dated 26-08-2010 given by the Petitioner. The Hon'ble Madurai Bench of the Madras High Court was pleased to pass orders directing the Petitioner to make a representation to the Second Respondent in the light of the contentions made in the Writ Petition and also directed the Second Respondent to dispose of the said representation on merits

and in accordance with law within a period of two weeks from the date of receipt of the representation from the Petitioner. Accordingly the Second Respondent has passed the impugned notice No. 395 dated 06-09-2010 without any basis and hence the same is unsustainable in law.

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

4.1 Due to increase in demand of power and lack in generation, the Government of Tamil Nadu has implemented Restriction and Control measures on the usage of electricity to all Industrial and Commercial consumers in the State. Based on the order of the Government, a notice dated 01-11-2008 was communicated to all HT consumers and commercial consumers containing instructions for power cut. The Tamil Nadu Electricity Regulatory Commission was also pleased to approve the Restriction and Control measures and issued order in this regard.

4.2 The demand and energy quota for the H.T. consumers using power partially from their Captive Power Plants have been refixed as per Circular Memo No. CE/Comm/EE/DSM/AEE/PMM/F.Powercut/D.28/2008, dated 17-11-2008. Arrangements have been made to take slot-wise check reading on every Saturday at the generator end and the details of energy actually supplied and shared to various industries who have wheeled energy from the generator have been communicated to the territorial Superintending Engineers, where the HT

Services available at the user end by every Monday, so that the consumption pattern with respect to the total quota fixed in respect of the HT Services, at the receiving end have been checked based on the supply of power and to take appropriate action.

4.3 The consumer shall not exceed demand / energy quota fixed by the Board for any reasons, either due to outage of generator of their supplier or short supply from their supplier etc and it is their responsibility to monitor their consumption with their generator. The excess demand / energy charges shall be collected at the rate as prescribed by the Hon'ble Tamil Nadu Electricity Regulatory Commission for the violation of quota fixed to the consumer. In the above method, the consumer may use their full wheeled energy without any cut.

4.4 For the month of July 2010 even though the Petitioner did not exceed the energy quota, demand quota has been exceeded over and above the monthly demand quota and peak hour demand quota including transformer loss. Though the Petitioner has supplied and generated energy over and above the consumption of the Petitioner for the above month, the excess monthly demand and peak hour demand charges has been computed based on the Circular Memo dated 17-11-2008 of Tamil Nadu Electricity Board.

4.5 The Petitioner was permitted to run their industry as per the quota fixed based on the proposed energy (as assured by the Petitioner) throughout the

month. Due to the effect of the revised energy and demand quota based on the proposed energy, the 48 hours notice for the quota violation has not been issued. The excess demand and energy charges have been levied based on the revised quota fixed under the proposed units only.

4.6 Based on the proposed wind energy received from the wind generators, the Tamil Nadu Electricity Board grid have been maintained and the supply of energy have also been determined (i.e.) the power cut position has also been fixed. Hence, in case of failure to provide the power as proposed by the wind generators, the Board will face huge loss, such as (i) to maintain the power cut already declared by the Board based on the proposed wind energy, (ii) the HT consumers having wind generators consume power as per the quota fixed to them based on the proposed wind energy.

4.7 The C.C. Bill for the month of 07/2010 in respect of the Petitioner has been reviewed and, it is noticed that the above consumer's industrial consumption for the month of 07/2010 is 376404 units. But, the Second Respondent has adjusted 359110 units only and not adjusted up to the declared energy level of 421308 units, even though the energy generated and supplied by the Petitioner's wind generator for the month of 07/2010 of 657775 units besides the excess energy has been arrived as 17294 units instead of the consumer has not availed any excess energy over and above the Tamil Nadu Electricity Board

portion of the energy quota which resulted in computation of excess energy erroneously by the Second Respondent.

4.8 The excess energy charges, the excess demand charges and the excess peak hour demand charges are revised and the Second Respondent has been intimated to adjust the excessively levied amount of Rs.1,35,613/- in the 01/2011 C.C. bill of the Petitioner and adjusted.

5. Findings of the Commission:-

The TNEB in their letter of 27-6-2010 fixed the demand quota for the petitioner for the month of July 2010 at 764 KVA and the Energy Quota at 4,21,308 units for July 2010 of which evening peak hour quota was 1,17,200 units. The recorded peak demand as revealed in the Bill of the TNEB for the month of July 2010 was 754 KVA and energy consumed for July 2010 was 3,76,404 units. The Consumer who is also a Wind Generator neither exceeded the demand quota nor the energy quota. All the same the bill for July 2010 levied excess demand charges of Rs.79,317/- and excess energy charges of Rs.1,85,607/-. The total penalty was Rs.2,64,924/-. The limited question before us is whether TNEB is bound by estoppel and whether the bill for July 2010 can be at variance with the demand and energy quota communicated in advance by the TNEB for the month of July 2010. The answer should be a categorical 'No'. The consumer has abided by the demand and energy quota communicated in advance by the TNEB for the month of July 2010 and therefore we have no

hesitation in setting aside the excess demand and excess energy charges levied by the TNEB for the month of July 2010.

6. Order:-

In view of the findings in para 5 above, the impugned Letter No. SE/TEDC/TNI/DFC/AS/HT/Asst/F.PC/D.No.395/10, dated 06-09-2010 of the Second Respondent is set aside. The Respondents are directed to refund the amount of penalty collected from the Petitioner for the month of July 2010 after adjusting the amount already refunded by way of adjustment.

7. Appeal:-

An appeal under section 111 of the Electricity Act 2003 against this order shall lie to the Appellate Tribunal for electricity within a period of 45 days.

(Sd.....)
(S. Nagalsamy)
Member

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission