

**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**

**M.P.NO.38 OF 2010**

M/s. Sree Ayyanar Spinning and Weaving Mills Limited  
Mill Premises  
Mallanginar.

... **Petitioner**

(Thiru.Rahul Balaji, Counsel for Petitioner)

Vs.

1. The Chairman,  
Tamil Nadu Electricity Board,  
Anna Salai,  
Chennai – 600 002.
2. The Superintending Engineer,  
Virudhunagar Electricity Distribution Circle, TNEB,  
Virudhunagar.
3. The Superintending Engineer,  
Madurai Electricity Distribution Circle, TNEB,  
Madurai.

... **Respondents**

(Thiru.H.S. Mohammed Raffi, Counsel for Respondents)

**Date of hearing: 07-09-2010, 21-10-2010, 29-10-2010,  
07-12-2010 and 10-01-2011.**

**Date of Order: 31-01-2011**

**ORDER****1. Prayer in M.P. No.38 of 2010:-**

The prayer in M.P. No.38 of 2010 is to issue directions to the Respondent to strictly comply with the directions issued by this Hon'ble Commission in M.P. No.42 of 2008 by providing for and seeking approval of the manner in which peak hour penalty is calculated such as it is strictly relatable only for the period for the alleged violation and further issue directions specifying the manner and procedure to determine violation of Restriction and Control measures, including the manner in which the data is interpreted for calculation of the peak hour penalty and consequently direct refund of any amounts collected towards alleged violation after redetermination by adopting the directions to be issued by this Hon'ble Commission.

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

2.1 The Petitioner herein is a spinning mill having factories at Mallanginar and Iluppaikulam with separate and distinct H.T. Nos. viz., H.T.S.C. Nos. 28 and 86 respectively. In view of the acute power shortage and power cuts imposed by the TNEB and keeping in mind the nature of the Petitioner's business activity, the Petitioner set up eight wind mills in Tirunelveli district.

2.2 Towards the excess charges for exceeding peak hour quota, the Second Respondent raised a demand notice bearing Lr.No.SE/VDR/AO/R/RCS/AS/F.HT.SC.NO.28/D.NO./10, dated 10-06-2010 for an amount of Rs.32,96,660/- and third Respondent raised a demand notice

bearing Lr.No.SE/MEDC/MDU/DFC/AS/AS/F.Peakhour/D.No.778/10, dated 20-05-10 for an amount of Rs.28,66,139/-.

- 2.3 Aggrieved by the said demand notices, the Petitioner has filed the present M.P. with the prayer in para 1 above.

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

- 3.1 It was the original position of the consumers within the State that this Hon'ble Commission's order in M.P. No.42 of 2008 did not provide for any penalty in terms of payment and the only power granted to the Board was the issuance of direction that would result in 48 hour reduction in quota as a consequence of violation of peak hour restriction.
- 3.2 The Commission vide its order issued on 04-05-2010, held that in addition to the 48 hour notice for reduction of quota, the Respondent Board would also have the power to collect peak hour penalty. The Petitioners contend that, the penalty imposed by the Respondent for the past period would be unjust and amount to retrospective application of the above provision.
- 3.3 The Petitioner states that the aspect of imposition of peak hour penalty as is being sought to be done by the Board is that for sufficiently long time after imposition of restriction and control measures in M.P. No.42 of 2008 which became effective from November 2008. No action in the form of imposition of any penalty or the issue of 48 hour notice was admittedly taken by the Respondent. This was for the reason that several consumers such as the Petitioner continued to comply with the restrictions imposed by the Respondent Board. However, after more than 8 months of the

issuance of the orders, the Respondent Board sought to levy peak hour penalties on the basis of data it had allegedly downloaded from the CMRI Energy Meters.

- 3.4 Without furnishing any month-wise figures of the excess demand and excess energy recorded by the meter of the Petitioner, the 1<sup>st</sup> Respondent has started issuing notices demanding to pay the amount including BPSC within 2 to 15 days of receipt of the notice.
- 3.5 Based on the 3 slot meter and the recordings found in the 3 slot meter which then existed with each HT consumer, the TNEB has downloaded the units consumed during the then peak hours of 6.00 a.m. – 9.00 a.m. and 6.00 p.m. – 9.00 p.m. and calculated the 6 hours consumption and arrived at a figure for 3 hours consumption by making it  $\frac{1}{2}$ . Likewise for the hours of 9.00 p.m. and 10.00 p.m., the 2<sup>nd</sup> Respondent has taken out the units consumed during the hours of 9.00 a.m. – 6.00 p.m., 9.00 p.m. – 10.00 p.m. and 5.00 a.m. – 6.00 p.m. (total 11 hours) and calculated  $\frac{1}{11}$ <sup>th</sup> of the total consumption and calculated the excess demand and energy charges for the hours of 9.00 p.m. and 10.00 p.m. as there is no provision with CMRI data downloaded from 3 slot TOD meter to show the actual energy consumed for the partial hours in a slot.
- 3.6 The excess demand and energy charges are not real and only calculated average based on dubious assumptions and therefore, the system of demanding excess energy and demand charges is not in consonance with the order passed in M.P. No.4 and 7 of 2010 on 04-05-2010 of this Hon'ble Commission.

- 3.7 By the method adopted by the 1<sup>st</sup> Respondent Board and by the manner in which the whole working is done, the excess demand and excess energy used during peak hours really does not reflect on the actual violation, as the whole method of calculating of the 1<sup>st</sup> Respondent Board is on an average basis and not on the actual basis. The very basis of such levy lacks transparency and the calculation of the levy itself is evidently being done contrary to the express terms of the order passed by the Tamil Nadu Electricity Regulatory Commission.
- 3.8. The Respondent is resorting to wholly arbitrary and illegal manner of calculation thereby resulting in huge levies of penalty being demanded which is contrary to the express terms of the order. The principal defect in the calculation is the assumption of the Respondent by calculating for the entire 24 hour charge rather than for the period during which the alleged infraction of the restriction took place.
- 3.9. The penalty is worked out based on the CMRI (Common Meter Reading Instrument) data of 3 slot TOD meters, which was used prior to installation of the 5 slot meters. This CMRI data is not accurate and reliable. The consumption is arrived from a graphical representation of the CMRI data.
- 3.10. The Respondent Board has resorted to impose penalty on the basis of data drawn from a common meter reading instrument data, to which the consumers have no access to. Regarding the billing according to Common Meter Reading Instrument (CMRI) in respect of Demand reached during the peak, non peak and night hours, consumer does not

have any access to see the readings recorded and also not aware that the readings are tampered with or not.

- 3.11 The basis of penalties that are at present imposed are the readings that are downloaded from the 3 slot electronic meters that have been installed. The data itself is in the form of a graph and calculations are made on the basis of assumptions without consideration of errors involved, both systematic and manual. The data itself that is downloaded is not provided in clear form to the consumers who are mostly in no condition to verify, or even rule out malefic intent.
- 3.12 In contravention of the rule 8 (a) of the Tamil Nadu Supply Code, 2004 the Respondent Board has failed to consider the power generated by the captive generators. Moreover, utilization of banked energy is not considered for penalty working. Adjustment of penalty paid earlier which were worked out without considering windmill energy generation.
- 3.13 The Respondent Board has installed 5 TOD meters in May 2009 for HT SC No. 28 in Mallanginar and in July 2009 for HT SC No.86 in Illupaikulam. Prior to the installation of these meters, there was no proper data available for electricity consumption during evening peak hours.
- 3.14 The Respondent Board failed to implement the powers granted by the Commission on the restriction of power drawal during evening peak hours at various stages. Applying an ex-past facto imposition for monetary penalties based on the May 5, 2010 order by the Hon'ble Commission will in no way result in a better implementation of Restriction and Control Measures in the past period.

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

- 4.1 The High Tension Service No.86 of M/s. Sree Ayyanar Spinning and Weaving Mills Limited, Illupankulam in Madurai Electricity Distribution Circle has a sanctioned Demand of 1450 KVA. The Board has implemented the Restriction and Control Measures as per the Government Letter No. (MS) No.121, Energy, dated 22-10-2008. Accordingly 40% demand and energy cut has been imposed on the base demand and base consumption from 01-11-2008 onwards. The Petitioner has been specifically informed not to draw power from Tamil Electricity Board grid during the evening peak hours (i.e.) 18.00 to 22.00 hours. But during the evening peak hours, Petitioner has been permitted 5% of the demand quota for lighting and security purpose.
- 4.2 The Petitioner, however, availed power from TNEB grid during the evening peak hour, not adhered the R&C instructions and violated the Board's order. The excess demand charges and energy charges have been arrived from the retrieved data down loaded from the CMRI. The calculation of excess demand and energy so arrived is in an accurate and scientific manner and it's transparency and clarity can be checked by any authority as the petitioner desires. The excess charges so arrived is Rs.28,66,139.00. The Petitioner has requested to pay the above amount in six installments. The same has been permitted and the Petitioner paid five installments amounting to Rs.23,88,450.00.

- 4.3 Due to sudden rise in demand and energy and due to the gap between the demand and generation, necessary R&C measures have been imposed. R&C measures have been executed in accordance with the provisions of the Electricity Act, 2003. The Hon'ble Commission passed the orders in M.P. No.42 of 2008 setting out various aspects of the imposition of R & C measures.
- 4.4 The Tamil Nadu Electricity Board has implemented 48 hours notice to the Petitioner for having violated the R&C measures. In addition to that the Tamil Nadu Electricity Board has also collected peak hour demand and energy charges. The penalty imposed by the Board is a just one and within the provisions of the orders pronounced by Hon'ble Commission. The levy of excess demand and excess energy charges are approved by this Hon'ble Commission in M.P. No.42 of 2008, R.P. No.2 of 2009 and also M.P. No.4 and 7 of 2010.
- 4.5 The contention of the Petitioner that after more than eight months of the issuance of the orders, the Board sought to levy the peak hour charges on the basis of the data it had allegedly down loaded from CMRI energy meter is denied. Since the consumer has been duly informed to adhere the instruction issued as per the letter issued from the Superintending Engineer / Madurai Electricity Distribution Circle / Madurai, the data download by the CMRI is the recorded data retrieved from meter and is an accurate one.
- 4.6 Every month all the parameters displayed in the Time of the Day Meters (TOD Meters), which is available in the premises of the High Tension

- Services are taken by the Assistant Executive Engineer (AEE) of the Operation and Maintenance concerned. The displayed readings are being entered in the Register available with the consumer and the register maintained by the AEE/Tamil Nadu Electricity Board (white meter card) in the presence of the consumer / authorized representative with the full details.
- 4.7. The load survey data, tamper data, billing data are being analyzed at MRT and if any defect is noticed leading to less recording in the meter, then billing revision will be recommended by MRT to concerned O & M personnel with a copy to the HT – Billing section in Superintending Engineer / Distribution Circle office.
- 4.8. The load survey graph report is generated by the base computer system from the recorded numerical values of consumption which is recorded by the TOD meter available in the HT services. The readings are recorded by the meter every half an hour. In certain cases viz. industries having Arc, induction furnaces or steel rolling process every 15 minutes readings must be recorded by the meter so as to comply with the Commission's tariff order. The load survey graph is nothing but the actual recorded consumption of the previous months values which is stored in the meter memory.
- 4.9 Every month, during the monthly billing reading, the meter datum are being downloaded and sent to MRT to be uploaded in the PC for future reference and these datum are being used for data analysis for energy

- recording since this (CMRI) instrument is MS Dos ver. 6.22 & IBM PC compatible.
- 4.10 Every month after uploading the CMRI data into the computer, it is kept ready to be viewed for the energy billing. The consumer has not requested any month wise excess demand and energy, used in his service. The consumer has already been informed not to violate the R & C measures. BPSC is levied as per the Tamil Nadu Electricity Board rules in vogue.
- 4.11 As mentioned in the suo-moto proceeding No.1 of 2009 dated 28-10-2009, the consumer's energy quota and demand quota has been refixed in accordance with the proposal regarding the wind mill generation as furnished by the consumer. In this case, the consumer has no wind mill energy in the banking and hence, it was not possible to adjust from the month of 11/2008. The consumer has been allotted with revised quota and energy based on the current month generation that prevailed.
- 4.12 The CMRI is an instrument which can retrieve both energy and demand of the HT services with 30 minutes integration period from 00.00 hours to 24.00 hours which is available within the meter. Irrespective of the meter whether it is 3 slots (or) 5 slots (zone) the CMRI will retrieve the entire data already recorded by the meter. From this any violation that had happened during the peak hours (or) whenever required may be retrieved. The calculation is real and not based on dubious assumption. There is no hidden factor in calculating the peak hour charges and there is no

contradiction to the Hon'ble Tamil Nadu Electricity Regulatory Commission orders.

- 4.13 The power generated by captive generators and utilization of banked energy is considered for penalty working details. If there is no banked energy, then the question of adjusting banked energy will not arise.
- 4.14 The peak hour charge levied is as per the direction of Tamil Nadu Electricity Regulatory Commission order in M.P. No.42 of 2008. There is no interpretation in arriving at the demand and energy. The measurements, recording is taken in an accurate and scientific manner and its transparency and clarity can be checked by any authority as the consumer desires.

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

- 5.1 The thrust of the argument of the Petitioner is that five slot programming for energy meters was introduced by the TNEB between April 2009 and August 2009, although the restriction and control measures enforced by the TNEB since November 2008 demanded five slot programming right in November 2008. The TNEB took time to introduce five slot programming. It introduced five slot programming some time between April 2009 and August 2009. The Petitioner contended that the absence of five slot metering was a handicap in monitoring the excess demand consumption during the evening peak hours. The fact that irrespective of whether the programming is for three slot or five slot, every half-an-hour the maximum demand is recorded by the meter should be sufficient for a consumer.

5.2. The Petitioner does not challenge the reliability of the CMRI data for the purpose of computation of excess demand charges. In that case what survives in the petition is the delay in introduction of five slot programming and the delay in raising the bills for excess demand charges by the TNEB.

5.3 We have dealt with this in M.P.No.4 of 2010 and M.P.No.7 of 2010. We refer to para 11.12 of the Order dated 4-5-2010 in the above cases:-

*“11.12 A plea has been raised by the Petitioners that excess demand charges and excess energy charges have been raised by the TNEB belated as late as one year after the Order. The excess demand charge and excess energy charge being in the nature of penalty, ought to have been levied promptly, in which case the Petitioners would have desisted from consuming excess power. The conduct of the TNEB, according to them, in raising the demand almost the year after the Order of the Commission amounts to waiver of claim for penal charges.”*

5.4. The Petitioner did not raise the issue of five slot metering during the arguments in M.P.No.4 of 2010 and M.P.No.7 of 2010. Perhaps, the Commission could have considered such a plea. Now that the excess demand and the excess energy charges have been upheld by the Commission, we do not wish to revisit the issue on another pretext. The Commission is unable to accept the plea of the Petitioner.

5.5 An offshoot of the petition is the relevance of CMRI data for computation of excess demand charges and excess energy charges. The TNEB is directed to furnish the CMRI data to such of the consumers, who seek the

data. The TNEB is directed to file a petition for Non Tariff Miscellaneous Charges for the purpose of furnishing the CMRI data within a month of the order, failing which the data shall be supplied free of cost to consumers.

5.6. The Petitioner referred to wrong billing by the TNEB in certain instances as listed in this petition. The Petitioner is advised to approach the relevant Consumer Grievance Redressal Forum for relief.

6. **Order and Direction:-**

In view of the findings in paragraph 5 above nothing survives in this petition to be resolved by this Commission. Regarding wrong billing, if any, it is open to the Petitioner to approach the relevant Consumer Grievance Redressal Forum for appropriate relief as per law. With this observation, this petition is dismissed.

The Tamil Nadu Electricity Board is directed to furnish CMRI data to such of the consumers, who seek the data. The Tamil Nadu Electricity Board is also directed to file a petition for Non-Tariff Miscellaneous Charges for the purpose of furnishing CMRI data within a month of this order, failing which the data shall be supplied by the licensee free of cost to consumers.

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.....)  
(S. Nagalsamy)  
Member – II

(Sd.....)  
(K. Venugopal)  
Member – I

(Sd.....)  
(S.Kaliban)  
Chairman

/ True Copy /

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