

**BEFORE THE TAMIL NADU ELECTRICITY REGULATORY
COMMISSION**

Dated : 11th September 2007

PRESENT :

Thiru S. Kabilan - **Chairman**
Thiru B. Jeyaraman - **Member**
And
Thiru R. Rajupandi - **Member**

D.R.P. No: 6 of 2007

Perambalur Sugar Mills Ltd
Rep. by the Chief Executive
Eriayur – 621 133
Perambalur District. Petitioner

Vs.

1. The Chairman
Tamil Nadu Electricity Board
800, Anna Salai
Chennai – 600 002.

2. The Member (Accounts)
Tamil Nadu Electricity Board
800, Anna Salai
Chennai – 600 002.

3. The Superintending Engineer
Trichy Electricity Distribution Circle
Tamil Nadu Electricity Board
Trichy – 620 020. Respondents

The above petition coming up for final hearing on 1st August 2007, the Commission upon perusing the petition and the counter affidavit of the Respondents and all other connected records of the case and upon hearing the arguments of both sides and having stood over for the consideration of this Commission till this day, hereby pronounces the following

ORDER

1. Prayer of the Petitioner:

The prayer of the petitioner is that this Commission may be pleased to set aside the proceedings of second respondent in letter No: CFC / Rev / Dir / Tf. Cell / AEE / F. Perambalur / D.17 / 07, 8-2-2007 and for direction for refund of Rs.8,15,339/- based on the claim of petitioner as per the working sheet by respondents Board to the petitioner.

2. Contentions of the Petitioner:

The Contentions of the petitioner are briefly set out as follows:-

(a) The respondents from July 1997 charged Tariff III rate for HT SC27 during season and off season period.

The third respondent by letter dated 12 – 10 –1998 rejected the claim for Tariff – I for service connection 27 during crushing seasons.

(b) With reference to the representation dated 26-8-2004 made by the petitioner the Tamil Nadu Electricity Regulatory Commission directed TNEB to charge HT Tariff – I for HT SC No. 27 during crushing seasons as was done earlier.

(c) Petitioners wrote to third respondent dated 8-8-2006 claiming

electricity tariff – I rate for HT SC 27 and praying for refund of Rs.8,15,339/- collected in excess from the petitioners.

(d) Petitioner received reply from second respondent dated 8-2-2007 stating that by proceedings dated 31-5-2005 the TNERC had not ordered HT Tariff I.A for HT SC No.27 for the prior period also, rejected adoption of HT Tariff I-A rate for the period from 98 to December 2005.

(e) The Petitioner contended that once the correct tariff i.e., Tariff I.A. is applicable the same is for current period as well as for prior period from 1998 to December 2005.

(f) The Tariff classification by TNERC dated 31-5-2005 applicable for HT 27 is covering the period 1998 – 99 to December 2005 also.

3. Contentions of the Respondents:

The Contentions of the respondents are briefly set out as follows:-

(a) The Tariff adopted for SC NO: 27 from date of effecting i.e. from 13.9.89 was under HT commercial Tariff based on the Tariff notification issued by the GOTN, which was in force before the TNERC's Tariff Order dated 15.3.2003.

(b) In the Letter dated 31.5.2005, the TNERC has not ordered to adopt HT Tariff I-A for any earlier period. Those orders have only prospective operation.

(c) The petitioner is not eligible for HT tariff IA before the TNERC's Orders dated 23.11.2005. The petitioner becomes eligible for HT Tariff I-A after the orders of TNERC.

4. Issues:

There are two issues which arise for consideration. They are as follows:-

(a) Whether the Order of the Commission is retrospective so as to cover the back period. namely 1998 to 30th may 2005.

(b) Whether the Petitioner's conduct in not approaching the Commission for the relief would amount to acquiescence.

5. Findings of the Commission with reference to 1st point in issue:-

With reference to 1st point in issue, it would be relevant to reproduce the operating part of the Order dated 31.5.2005 passed by this Commission

“ (1) The Service Connection No:27 is at vellar river to pump water for industrial use.

(2) The use of water (drawn from the river for industrial purpose) to the quarters, administrative office, etc. at the premises are incidental and also to the industrial activity.

(3) Hence SC No:27 may be charged under HT Tariff I during crushing season as was done earlier.”

From a reading of the above Order extracted above it would be seen that the above order of this Commission is prospective. This Order is made with reference to the letter of the petitioner dated 26.8.2004 wherein there is no request for retrospective relief. As per regulation 31 (2) of the TNERC Conduct of Business Regulations 2004 the Orders of the Commission after their pronouncement cannot be altered or added except where there is any clerical or arithmetical errors. The acceptance of the claim made by the petitioner for giving retrospective effect would amount to review of the order and this is not legally sustainable in view of regulation 43(1), according to which an Order can be reviewed only when there is mistake of fact or ignorance of any material fact or any error apparent on the face of the record. In the instant case there is no ground for such a review. The 1st point in issue is decided against the petitioner.

6. Findings of the Commission with reference to 2nd point in issue:-

With reference to 2nd point in issue, it may be stated that in the instant case the SE Trichy EDC, in his letter 27 / D / 293 / P 1 dated 12-10-98 has rejected the request of the petitioner for the change of classification of tariff and the consequent relief for the refund of excess amount paid by the petitioner. The said rejection of the SE is dated 12th October 1998. The petitioner remained silent for more than five years. The petitioner's conduct in not approaching this Commission earlier, would amount to acquiescence of the Order of the SE, Trichy, since, the petitioner has been paying the commercial tariff for nearly 5 years and 10 months without any protest or representation. In this connection the following portion at page 30 of the commentary of the Constitution of India (9th edition) by Durgadas

Basu would be relevant “ In Nainsukh Vs State of UP (1953 SC R 1184) the Supreme Court observed that a person who had acquiesced in an election being conducted on the basis of separate electorates formed on communal lines could not seek his remedy under Art 32 after the election was over.” At page 538 of the said commentary it has been observed as follows:-
“Acquiescence 1 Relief under Art 32 or 226 has also been refused on the ground of acquiescence.”

..... “ II The principle underlying the doctrine of acquiescence is that the omission on the part of the petitioner to assert his right has caused prejudice to the adverse party” Regarding waiver of the statutory right, Basu's commentary at pages 538 – 539 is extracted below for reference:-

“Waiver. Though the question of bar to relief on the ground of waiver would not arise under Art 32 because it has been held that under our Constitution no fundamental right can be waived by the party affected, it may be pleaded in bar to a proceeding under Art 226 where the petitioner complains of the

violation of a statutory right.” (Krishnan lal Vs State of J & K) (1994) 4 SCC 422) “Indira Vs Nand Kishore (1990) 4 SCC 668)”

In view of the above position the petitioner by their conduct in remaining silent for more than five years and 10 months when their request was turned down by SE Trichy on 12.10.98 cannot claim retrospective effect of the Order of the Commission.

7. Conclusion:-

In the above circumstances the DRP No: 6 / 2007 is dismissed without cost.

Pronounced in the Open Court by this Commission on 11th September 2007.

(R. RAJUPANDI)
Member

(B.JEYARAMAN)
Member

(S.KABILAN)
Chairman

