



**THE 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 B. Jeyaraman** - **Member**  
**Thiru R. Rajupandi** - **Member**

**and**

**M.P. 45 and 46 of 2008**

**in**

**D.R.P. No. 7 of 2008**

PPN Power Generating Company Pvt.,Ltd., ..... Petitioner in M.P.No.46 of  
III Floor, Jhaver Plaza 2008 and  
1-A, Nungambakkam High Road Respondent in  
Chennai – 600 034. M.P.No. 45 of 2008

**Vs**

The Chairman ..... Respondent in  
Tamil Nadu Electricity Board M.P.No.46 of 2008 and  
800 Anna Salai Petitioner in M.P.No.45 of  
Chennai - 600 002. 2008

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M.P. No. 45 of 2008 and M.P.No.46 of 2008 came up for final hearing before the Commission on 12<sup>th</sup> January 2009. The Commission upon perusing the above petitions and upon hearing the arguments of both sides and in view of the fact that the issues raised in, both the above petitions are the same and as both the above petitions relate to the order of the Commission delivered on 27-11-2008 in DRP No.7 of 2008, passes the following Common Order namely:-

**COMMON ORDER DATED 25<sup>th</sup> February 2009**

**1. Prayer of the petitioner in M.P. No.45 of 2008**

The prayer of the petitioner (TNEB) in M.P.No.45 of 2008 is to extend the time for filing the amended claim petition as directed by the Commission for further period in view of non furnishing of the vital documents by the Respondent (M/s. PPN Power Generating Company Pvt. Ltd.), and consequently direct the Respondent to furnish the documents as called for by the Board in the letters dated 4-12-2008 and 8-12-2008.

**2. Prayer of the petitioner in M.P.No.46 of 2008**

The prayer of the petitioner (M/s. PPN Power Generating Company Pvt. Ltd.), in M.P.No.46 of 2008 is to pass

necessary directions, directing the Secretary to ensure that the Respondent (TNEB) immediately / forthwith comply with the order dated 27-11-2008 passed by this Commission in DRP No.7 of 2008.

### **3. Order in DRP 7 of 2008**

The operative portion of the order dated 27-11-2008 as passed by the Commission in DRP No.7 of 2008 is as follows:

“We direct the petitioner to furnish his list of claims including that of interest to the respondent within one month in terms of the above order. If the Respondent accepts the claim, payment shall be made to the petitioner in six equal monthly instalments. The first instalment shall commence within one month of the submission of the claim by the petitioner. If the Respondent disputes any part of the claim, he may file the amended claim with the Commission within one month from the date of submission of the claim by the petitioner”.

### **4. Need for Common Order**

The TNEB has filed a separate M.P. No.45 of 2008 disputing the claims made by Respondent M/s. PPN Power Generating Company Private Limited. The Petitioner in M.P.No.46 of 2008 (M/s. PPN Power Generating Company Pvt. Ltd.) has prayed for the implementation of the Order

dated 27-11-2008 issued by this Commission in DRP No.7 of 2008. Since the issues raised in both the above M.P. No.45 of 2008 and M.P. No.46 of 2008 are same and since they relate to the order of the Commission delivered on 27-11-2008 in DRP No.7 of 2008, it is necessary to club both the above petitions and consider the issues raised in both the above petitions.

**5. Contentions of Petitioner in M.P. No. 45 of 2008**

The Petitioner TNEB in M.P. No.45 of 2008 contended as follows:

1. The Petitioner submits that the respondent IPP gave its list of claims on 29-11-2008 without furnishing the documents required by the Petitioner Board. The Petitioner Board has already placed on record that these documents are crucial, relevant and vital for finalization of the claim of the Company and to resolve the disputes, if any. This position has also been accepted by the Commission.
2. The Petitioner Board is disputing the quantum of the claim as the Company has not furnished the relevant required documents as per the order passed by this Hon'ble Commission.
3. The Respondent Company herein is repeatedly making its claims based on the Advance Tax invoices even for the completed years for which assessment would have been completed. The Respondent has not furnished the relevant and vital documents to know the actual tax paid.

## **6. Contentions of Petitioner in M.P. No. 46 of 2008**

The Petitioner Company in the M.P. No.46 of 2008 contended as follows:

1. The Petitioner on November 29, 2008 furnished list of claims including that of interest to the Respondent requesting them to comply with the order of this Commission.
2. It has been one month since the claim as per the Commission's order was presented to the Respondent. The Petitioner has till date not received the first instalment of specified taxes claim of Rs.10,02,71,807 (Rupees Ten crores two lakhs seventy one thousand eight hundred and seven only)

## **7. Arguments**

The Learned Counsel for TNEB contended that the claim of the PPN Company should relate to only actual payment of income tax relating to the power of energy supplied to TNEB. He further stated that PPN Company seeks payment of only advance tax and not actual payment of tax. The Learned Counsel for PPN Company stated that the object of the TNEB is to delay the payment. He further stated that upto 2006-07 final assessment order has been given to TNEB.

## **8. Findings of the Commission**

8.1. The M.P. No.45 of 2008 of the Tamil Nadu Electricity Board (hereinafter referred to as TNEB) and M.P. No.46 of 2008 of M/s. PPN Power Generating Company Private Limited (hereinafter referred to as PPN) are clubbed together as the issues raised in the two petitions are the same. They both relate to the order of the Commission delivered on 27-11-2008 in DRP No.7 of 2008.

8.2 Para 9.2 of the order of the Commission directed PPN to furnish the list of claims including that of interest to the TNEB within one month. Payment is to be made by the TNEB in six equal monthly instalments. If the TNEB disputes any part of the claim, they were directed to file the amended claim with the Commission.

8.3. In terms of the above order, PPN submitted on 29-11-2008 to TNEB a claim of Rs.60,16,30,844 towards the invoices dated 26-6-2001 to 16-6-2008 including interest thereon. The claim submitted by PPN relates to the period up to the filing of the DRP 7 of 2008. The TNEB by their letter dated 3-12-2008 demanded the following documents from PPN for consideration of their claims:-

- (a) Copy of statement of total income prepared for Income Tax purposes.
- (b) Copy of statement of computation of income U/S 115JB
- (c) Copy of Tax Audit Report in form 3CB & 3CD with Annexures

- (d) Copy of Audit Report in Form 29 B for computation of minimum alternative tax
- (e) Copy of returns filed with acknowledgement (acknowledgement available for certain years only)
- (f) Copy of the intimation received from Income Tax Office U/S 143 (1) (a) for the years 2005-06 and 2006-07.
- (g) Copy of Assessment Order U/S 143 (3)

8.4. PPN contends that these are the very same documents demanded by the TNEB in their letter dated 25-8-2008 before the TNERC pronounced its order in DRP 7 of 2008. In that letter, the TNEB confirmed that the following documents of PPN were available with them:-

- (a) Copy of Annual Reports for the year ended 31-3-2002 to 31-3-2006
- (b) Copy of the intimation received from Income Tax Office U/S 143 (1) (a) for the years 2002-03, 2003-04 and 2004-05
- (c) Statement of Income attributed to the business of power generation.

8.5. Attachment II of M.P. No. 46 of 2008 of PPN states that invoices were submitted by them to TNEB on 26-6-2001, 31-1-2002, 11-12-2003, 30-11-2004, 31-7-2005, 30-9-2005, 15-12-2005, 31-12-2005, 31-3-2006, 15-5-2006, 16-6-2006, 24-8-2006, 20-9-2006, 28-12-2006, 20-3-2007, 10-7-2007, 3-10-2007, 6-12-2007, 15-12-2007,

15-3-2008, 3-6-2008 and 16-6-2008. Interest on the invoiced amount has been claimed by PPN upto the date of submission of the claim on 29-11-2008.

8.6. We, now, refer to para 9(2) of the order of the Commission which states that if the TNEB disputes any part of the claim, they may file the amended petition with the Commission within a month. The dispute referred to in para 9(2) should be interpreted to mean a dispute, which has not been dealt with in the Commission's order in DRP 7 of 2008. For example, the rate of interest has not been quantified in the Power Purchase Agreement (hereinafter referred to as the PPA) between the two parties, although a formula has been laid down therein. We would like to clarify that disputes with regard to claims made in the invoice will have to be resolved in terms of the PPA.

8.7. The PPA stipulates that specified taxes has a deadline of one month for payment as explained in Para 8 (8) of the order. Again, para 8 (10) of the order refers to clause 10.2 (e) of the PPA to say that TNEB shall not have the right to dispute any invoice after a period of one year from the due date of such invoice.

8.8. The TNEB has, now, sought to raise disputes on the invoices raised between 26-6-2001 and 16-6-2008. We wish to reiterate that the time limit of one year for raising disputes would apply to these invoices and therefore we are unable to go beyond the PPA. The TNEB

concedes in their letter dated 25-8-2008 addressed to PPN that they have received the intimation of the Income Tax department under Section 143 (1) (a) of the Income Tax Act for 2002-03, 2003-04 and 2004-05 and the statements of Income Tax attributed to the business of power generation. It is pertinent to note that even for these periods, when sufficient information was available with TNEB, they did not raise any dispute within the stipulated period of one year, as was revealed by the TNEB during the arguments.

8.9. A plain reading of the Income Tax Act 1961 reveals the following bare information, which, we think, throws sufficient, though not authoritative, light on the present dispute between TNEB and PPN. Section 143 (1) of the Income Tax Act 1961 states that an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by or the amount of refund due to the assessee. An assessment under 143 (3) would be necessary only when the Income Tax Department believes in terms of Section 143 (2) that a claim of loss, exemption, deduction, allowances or relief is held to be inadmissible. Therefore, assessment order under Section 143 (3) may not be required in all cases. Intimation under 143 (1) may be, perhaps, sufficient. We do not want to pronounce an authentic opinion on this aspect of the dispute. It is for the two parties to settle the dispute in terms of the PPA.

8.10. Therefore, we are unable to come to the rescue of the TNEB in so far as the implementation of the PPA is concerned. The PPA binds both the parties. The Commission would not be able to go beyond the terms of the PPA. If the Commission were to issue a direction to PPN to furnish the documents demanded by TNEB in their letters dated 4-12-2008 and 8-12-2008 beyond the one year period specified in Clause 10.2(e) of the PPA, that direction would be violative of the PPA and hence beyond the jurisdiction of the Commission. Wherever the one year deadline from the date of submission of the invoice by PPN has not expired, the TNEB is at liberty to raise a dispute after complying with Clause 10.2(e) of the PPA.

8.11. The petition of the TNEB M.P.No.45 of 2008 is, therefore, dismissed and the petition M.P.No.46 of 2008 of PPN is allowed with the direction that the order of the Commission in DRP No.7 of 2008 be implemented forthwith. We are constrained to observe in passing that the TNEB could have saved the interest payment of nearly Rs.20 crores, had their officials applied their mind to the terms of the PPA in time.

**Pronounced in the Open Court on 25<sup>th</sup> February 2009**

(Sd.....)

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

- Secretary  
Electricity

(Sd.....)

**(B. Jeyaraman)**  
**Member I**

/ True Copy /

(Sd.....)

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

Tamil Nadu

Regulatory Commission