

**IN THE HON'BLE TAMIL NADU ELECTRICITY
REGULATORY COMMISSION
CHENNAI**

31ST DAY OF OCTOBER 2002

CORUM:

The Hon'ble Chairman Mr. A. Balraj, IAS., Retd. - Chairperson

The Hon'ble Member Mr. E.C. Arunachalam - Member

and

The Hon'ble Member Mr. S. Thangarathnam - Member

**Revision Petition Nos. 1/2002 to 252/2002 connected stay
petitions and direction petitions**

Appellants:

M/s Sri Krishna Alloys, Sankari	Petitioner in RP 1/2002
M/s Sri Vinayaga Alloys Pvt.. Ltd, Sankari	Petitioner in RP 2/2002
Jai Bhavani Steel Enterprises Pvt. Ltd Ponneri	Petitioner in RP 3/200
NGA Steels Pvt.. Ltd, Tiruchengode	Petitioner in RP 4/2002
M/s A.R. Metallurgicals Pvt. Ltd, Nallagontapalli village	Petitioner in RP 5/2002
Dindigul Steel Rolling Mills Pvt. Ltd Dindigul	Petitioner in RP 6/2002
Tower Steels (India) Ltd, Kappalur	Petitioner in RP 7/2002
Agni Steels Pvt.. Ltd, Erode	Petitioner in RP 8/2002
M/s Sri Vigneswara Steels (P) Ltd, Sankari	Petitioner in RP 9/2002
Pavai Alloys & Steels Pvt.. Ltd, Kandampalayam	Petitioner in RP 10/2002
J K Pharmachem Ltd, Cuddalore	Petitioner in RP 11/2002
Jaihind Wire Rod Mills Ltd, Unit I & II Salem	Petitioner in RP 12/2002
Veerappan Steels Pvt.. Ltd, Erode	Petitioner in RP 13/2002

Ponneri Steel Industries, Chennai	Petitioner in RP 14/2002
Ran India Steel (P) Ltd, Tiruchengode	Petitioner in RP 15/2002
Hindustan Fusal Pvt.. Ltd, Hosur	Petitioner in RP 16/2002
Rengaraj Steels and Alloys Pvt.. Ltd Salem	Petitioner in RP 17/2002
Sri Venkateswara Steel Industries, Salem	Petitioner in RP 18/2002
Sri Venkatachalapathy Paper Boards Pvt.. Ltd, Chennai	Petitioner in RP 19/2002
Vishnupriya Paper Mill Pvt.. Ltd, Chennai	Petitioner in RP 20/2002
M/s Pullicar Mills Ltd, Tiruchengode	Petitioner in RP 21/2002
Subadhra Alloys Pvt..Ltd, Mathur	Petitioner in RP 22/2002
The All India Skin & Hide Tanners and Merchants Association, Chennai	Petitioner in RP 23/2002
Tagros Chemicals India Ltd, Cuddalore	Petitioner in RP 24/2002
Pioneer Miyagi Chemicals Pvt. Ltd, Cuddalore	Petitioner in RP 25/2002
Tanfac Industries Ltd, Cuddalore	Petitioner in RP 26/2002
Victory Chemicals Pvt.. Ltd, Cuddalore	Petitioner in RP 27/2002
Vanavil Dyes & Chemicals Ltd, Cuddalore	Petitioner in RP 28/2002
Ennore Foundries Ltd, Ennore	Petitioner in RP 29/2002
Lakshmi Ganesh Textiles Pvt.. Ltd, Chellapampalayam	Petitioner in RP 30/2002
Spic Pharmaceuticals Division, Cuddalore	Petitioner in RP 31/2002
Leeds Spinning Mills Pvt.. Ltd, Desipalayam	Petitioner in RP 32/2002
SJLT Textiles Ltd, Namakkal	Petitioner in RP 33/2002
Sri Ayyanar Spinning and Weaving Mills Ltd, Unit II, Illupaikulam	Petitioner in RP 34/2002
Vikky Industries Ltd, Gummidipoondi	Petitioner in RP 35/2002
Vikky Industries Ltd, Gummidipoondi	Petitioner in RP 36/2002
Karur KCP Packaging Ltd, Mayanoor	Petitioner in RP 37/2002
Salem Kandan Textiles Ltd, Salem	Petitioner in RP 38/2002

M. Premselvi, Coimbatore	Petitioner in RP 39/2002
M/s. Vignesh Textiles, Coimbatore	Petitioner in RP 40/2002
M/s Arun Vypar Udyog Ltd, Chennai	Petitioner in RP 41/2002
M/s Honeypriya Textiles, Coimbatore	Petitioner in RP 42/2002
M/s Padmavathy Textiles, Coimbatore	Petitioner in RP 43/2002
M/s Komalagowri Textiles, Coimbatore	Petitioner in RP 44/2002
M/s Arun Smelter Ltd, Chennai	Petitioner in RP 45/2002
PKPN Spinning Mills Pvt.. Ltd, Southapuram	Petitioner in RP 46/2002
Calac Pvt.. Ltd, Cuddalore	Petitioner in RP 47/2002
Asian Paints India Ltd, Cuddalore	Petitioner in RP 48/2002
Arunachala Gounder Textile Mills Pvt.. Ltd, Modamangalam	Petitioner in RP 49/2002
Dorairaj Mills Ltd, Unit II, Annur	Petitioner in RP 50/2002
Sowdeswari Amman Spinner Ltd, Unit B, Punjai Puliampatty	Petitioner in RP 51/2002
Yogalakshmi Spinning Mills Pvt. Ltd, Punjaipuliampatty	Petitioner in RP 52/2002
M/s Rajnarayan Hosiery Exports Pvt.. Ltd, Coimbatore	Petitioner in RP 53/2002
Ennar Spinning Mills Pvt. Ltd, Coimbatore	Petitioner in RP 54/2002
Kalapatty Spinning Mills (P) Ltd, Coimbatore	Petitioner in RP 55/2002
Sowdeswari Amman Spinners Ltd, Nallur	Petitioner in RP 56/2002
Annur KPK Spining Mills (P) Ltd, Annur	Petitioner in RP 57/2002
Cardwell Spinning Mills Ltd, Coimbatore	Petitioner in RP 58/2002
Durairaj Mills Ltd, Pethanayaganpalayam	Petitioner in RP 59/2002
Alamelu Balaji Spinning Mills (P) Ltd, Annur	Petitioner in RP 60/2002
Venkataganga Textiles Ltd, Kariampalayam	Petitioner in RP 61/2002
CAG Hotels Pvt. Ltd, Coimbatore	Petitioner in RP 62/2002

Rajnarayan Textiles Ltd, Coimbatore	Petitioner in RP 63/2002
Champa Textiles Ltd changed as Sujitha Cotton Mills Ltd, Punjaipuliampatty	Petitioner in RP 64/2002
The Southern Textiles Ltd, Coimbatore	Petitioner in RP 65/2002
Megala Carona Textiles (P) Ltd, Alukuli	Petitioner in RP 66/2002
Cheran Spinners Ltd, Erode	Petitioner in RP 67/2002
Salona Cotspins Ltd, Pungampalli	Petitioner in RP 68/2002
Danabagyam Spinners Pvt.. Ltd, Nallurkandampalayam	Petitioner in RP 69/2002
Arun Textiles Pvt.. Ltd, Gobichettypalayam	Petitioner in RP70/2002
Tantec Agro Chemicals Ltd, Chennai	Petitioner in RP 71/2002
Omnicast Precision Products Pvt.. Ltd, Cuddalore	Petitioner in RP 72/2002
Spictex Cotton Mills Pvt. Ltd, Kannivadi	Petitioner in RP 73/2002
TVS Sri Chakra Ltd, Vallaripatti	Petitioner in RP 74/2002
Vaigai Chemicals Industries Pvt. Ltd, Thanichiam	Petitioner in RP 75/2002
Vaigai Agro Products, Poolangulam Village	Petitioner in RP 76/2002
Viswa Agro Enterprises Ltd, Gobichettypalayam	Petitioner in RP 77/2002
M/s Rallis India Ltd, Cuddalore	Petitioner in RP 78/2002
Sri Dandapani Textiles, Vellakovil	Petitioner in RP 79/2002
Sathya Fabrics, Vellakovil	Petitioner in RP 80/2002
Shiva Textiles, Vellakovil	petitioner in RP 81/2002
Sree Shamundi Spinners, Olapalayam	Petitioner in RP 82/2002
Sri Ganeshaa Textiles, Vellakovil	Petitioner in RP 83/2002
Arun Textiles, Vellakovil	Petitioner in RP 84/2002
Alankar Textile Mills, Vellakovil	Petitioner in RP 85/2002
Veimal Textiles, Vellakovil	Petitioner in RP 86/2002
RGP Textiles, Vellakovil	Petitioner in RP 87/2002

Sri Ponvinayaga Textiles Mill, Vellakovil	Petitioner in RP 88/2002
Durga Cotton Mills, Vellakovil	Petitioner in RP89/2002
SPR Textiles, Vellakovil	Petitioner in RP 90/2002
Chandru Mills, Vellakovil	Petitioner in RP 91/2002
Radha Textiles (P) Ltd, Manaparai	Petitioner in RP92/2002
Sulochana Cotton Mills Pvt.. Ltd, Unit I & II Tirupur	Petitioner in RP 93/2002
KICL Textiles Ltd, Coimbatore	Petitioner in RP 94/2002
Sri Amman Steel and Allied Industries, Tiruchirapalli	Petitioner in RP 95/2002
Maxwell Industries Ltd, Kolappalur	Petitioner in RP 96/2002
Sri Angalaparameswari Textiles Mills Pvt.. Ltd, Vellakovil	Petitioner in RP 97/2002
Sri Jagathguru Textiles Mills Pvt.. Ltd, Vellakovil	Petitioner in RP 98/2002
Sri Madurambigai Spinning Mills Pvt.. Ltd, Vellakovil	Petitioner in RP 99/2002
M/s Bhuwalka Steel Industries Ltd, Chennai	Petitioner in RP 100/2002
M/s Deccan Alloys Pvt.. Ltd, Hosur	Petitioner in RP 101/2002
Sri Ayyanar Spinning & Weaving mills Ltd, Unit I, Mallanginar	Petitioner in RP 102/2002
ASS Mills Pvt.. Ltd, Agraharam Village	Petitioner in RP 103/2002
Shree Malliga Mills Pvt.. Ltd, Agraharam Village	Petitioner in RP 104/2002
M/s Jai Bharath Tanners, Vellore	Petitioner in RP 105/2002
Sumangala Steel Ltd, Chennai	Petitioner in RP 106/2002
P.M.P. Iron & Steel India Ltd, Chennai	petitioner in RP107/2002
Shri Balaji Steel Industries, Thatchur Village	Petitioner in RP 108/2002
Bharat Steel industries, Chennai	Petitioner in RP109/2002
The Bharat Steel Rolling Mills, Salem	Petitioner in RP 110/2002
Sri Krishna Smelters, Sankari	Petitioner in RP111/2002
Sri Krishna Steels, Sankari	Petitioner in RP 112/2002

M/s Surana Metals and Steels India Ltd, Chennai	Petitioner in RP 113/2002
Chamundi Steel Castings India Ltd, Thenganikota	Petitioner in RP 114/2002
M/s National Engineering Co. Ltd, Chennai	Petitioner in RP 115/2002
M/s Shobaghaya Steels (P) Ltd, Chennai	Petitioner in RP 116/2002
M/s Triveni Alloys Ltd, Gummidipoondi	Petitioner in RP 117/2002
Indian Steels and Allied Products, Chennai	Petitioner in RP 118/2002
Indra Ispat Udyog, Chennai	Petitioner in RP119/2002
M/s Kanishk Steel Industries Ltd, Chennai	Petitioner in RP 120/2002
M/s OP Steel Ltd, Chennai	Petitioner in RP 121/2002
M/s Salem Food Products, Salem	Petitioner in RP 122/2002
M/s Tulsyan Nec Ltd, Chennai	Petitioner in RP 123/2002
M/s Rajalakshmi Paper Mills Ltd, Madathukulam	Petitioner in RP 124/2002
The Venkatesa Mills Ltd, Udumalpet	Petitioner in RP125/2002
V.G. paper & Boards Ltd, Unit II Kolumam	Petitioner in RP 126/2002
M/s.Amaravathy Sri Venkatesa paper Mills Ltd, Madathukulam	Petitioner in RP 127/2002
M/s V.G. Paper & Boards Ltd, Madathukulam	Petitioner in RP 128/2002
Vishnuvardhan Paper Mills (P) Ltd, Madathukulam	Petitioner in RP 129/2002
Chennai Footwear Pvt.. Ltd, Chennai	Petitioner in RP 130/2002
India Shoes Pvt.. Ltd, Chennai	Petitioner in RP 131/2002
M/s Eastern Chrome Tanning Corpn, Pvt.. Ltd, Chennai	Petitioner in RP 132/2002
Delta Shoes Pvt.. Ltd, Chennai	Petitioner in RP 133/2002
Farida Prime Tannery, Chennai	petitioner in RP 134/2002
M/s, Floram Shoes India Pvt.. Ltd, Chennai	Petitioner in RP 135/2002
M/s Unico Leather Products Pvt.. Ltd, Chennai	Petitioner in RP 136/2002

M/s Florind Shoes Pvt.. Ltd, Chennai	Petitioner in RP 137/2002
M/s United India Shoes Corpn., Pvt.. Ltd, Chennai	Petitioner in RP 138/2002
Farida Classics Shoes Pvt.. Ltd, Chennai	Petitioner in RP 139/2002
Farida Leather Ware Pvt.. Ltd, Chennai	Petitioner in RP 140/2002
Farida Prime Tannery C Unit, Chennai	Petitioner in RP 141/2002
Farida Shoes Pvt.. Ltd, Chennai	Petitioner in RP 142/2002
Armstrong Spinning Mills Pvt.. Ltd, Meenakarampalayam	Petitioner in RP 143/2002
Pallava Textiles Ltd, Mangaranganpalayam	Petitioner in RP 144/2002
Raghavendra Spinners Ltd, Tirunelveli	Petitioner in RP 145/2002
Emerald Textiles (P) Ltd, Maniparaipatty	Petitioner in RP 146/2002
Pallipalayam Spinners Pvt.. Ltd, Salem	Petitioner in RP 147/2002
Devandira Spinners Pvt.. Ltd, Padaveedu Village	Petitioner in RP 148/2002
Maris Spinners Ltd, Manaparai	Petitioner in RP 149/2002
Brindavan Cotton Mills Ltd, Coimbatore	Petitioner in RP 150/2002
Colix Beverages Ltd, Cuddalore	Petitioner in RP 151/2002
Subadra Spinning Mills Pvt.. Ltd, Vinnvanur	Petitioner in RP 152/2002
Karpagam spinners Pvt.. Ltd, Tirunelveli	Petitioner in RP 153/2002
Subburaj Cotton Mills Pvt.. Ltd, Rajapalayam	Petitioner in RP 154/2002
Origin Agro star Ltd, Cuddalore	Petitioner in RP 155/2002
M/s, Jambai KNM Textiles Pvt.. Ltd, Kumarapalayam	Petitioner in RP 156/2002
Sugavaneswara Spinning Mills Pvt.. Ltd, Salem	Petitioner in RP 157/2002
Seshasayee Paper & Boards Ltd, Erode	Petitioner in RP 158/2002
M/s Arasan A Products Pvt.. Ltd, Tuticorin	Petitioner in RP 159/2002
M/s Senthil Oxygen Pvt.. Ltd, Thirukanurpatti	Petitioner in RP 160/2002
M/s Cholan Paper & Mill Pvt.. Ltd, Bukkathurai	Petitioner in RP 161/2002
M/s K.T. Spinning Mills PVT.. Ltd, Valaisaiyur	Petitioner in RP 162/2002

M/s Unnamalai Spinning Mills Pvt.. Ltd, Kombur	Petitioner in RP 163/2002
K.P.R. Mills Pvt.. Ltd, Indiampalayam Village	Petitioner in RP 164/2002
Thakdoor Spinning Mills Pvt.. Ltd, Nallanhalli Village	Petitioner in RP 165/2002
M/s Sonal Vypar Ltd, Salem	Petitioner in RP 166/2002
M/s Velingiri Andavar Textiles Pvt.. Ltd Coimbatore	Petitioner in RP 167/2002
United Spinners, Coimbatore	Petitioner in RP 168/2002
Sri Palani Andavar Textiles Unit II Coimbatore	Petitioner in RP 169/2002
Sri Murugan & Co, Coimbatore	Petitioner in RP 170/2002
C.N.V. Textiles Pvt.. Ltd, Coimbatore	Petitioner in RP 171/2002
Sri Rathinagiri Eswarar Spinning Mills Pvt.. Ltd, Vellakovil	Petitioner in RP 172/2002
C.V.R. Textiles, Coimbatore	Petitioner in RP 173/2002
Sri Palani Andavar O.E. Unit, Coimbatore	Petitioner in RP 174/2002
Sivasubramania Textiles, Coimbatore	Petitioner in RP 175/2002
Pazhamuthir Mills, Coimbatore	Petitioner in RP 176/2002
Sri Palani Andavar Textiles Unit I Coimbatore	Petitioner in RP 177/2002
G.K. Alloys Steel Pvt.. Ltd, Avinasi	Petitioner in RP 178/2002
Loga Textiles Pvt.. Ltd, Tirupur	Petitioner in RP 179/2002
M/s Mani Spinning Mills Pvt.. Ltd, Vedasandur	Petitioner in RP 180/2002
M/s. Pannari Amman spinning Mills Ltd, Dindigul	Petitioner in RP 181/2002
M/s Eveready Spinning Mills Ltd, Dindigul	Petitioner in RP 182/2002
M/s Ambika Cotton Mills Ltd, Dindigul	Petitioner in RP 183/2002
M/s Bhuvaneshwari Textiles Pvt.. Ltd, Dindigul	Petitioner in RP 184/2002


M/s Ambika Cotton Mills Ltd, Dindigul	Petitioner in RP 185/2002
S.S.D. Spinning Mills Ltd, Muthulapuram	Petitioner in RP 186/2002
M/s. Shiva Taxyarn {Division of Annamalai Finance Ltd.) Velvarkottai	Petitioner in RP 187/2002
M/s Ramachandra Textiles Pvt.. Ltd, Vedaundur	Petitioner in RP 188/2002
M/s Sri Saravana spinning Mills Ltd, Unit II, Vedaundur	Petitioner in RP 189/2002
M/s Sri Saravana Spinning Mills Ltd, Dindigul	Petitioner in RP 190/2002
M/s Palmar Mills Pvt.. Ltd, Sathyankottai	Petitioner in RP 191/2002
M/s Mariammal Cotton Mills Pvt.. Ltd, Puliampatti	Petitioner in RP 192/2002
M/s SVPB Spinners Pvt.. Ltd, Semalaipatti	Petitioner in RP 193/2002
M/s SVA Syntex (P) Ltd, Thalaisyuthu	Petitioner in RP 194/2002
M/s Theagaraja Mills Ltd, Unit III, Nilakottai	Petitioner in RP 195/2002
M/s Rathinasamy Spinners Pvt.. Ltd, Kasipalayam	Petitioner in RP 196/2002
Rajalakshmi Spinning Mills, Vellakovil	Petitioner in RP 197/2002
M/s Gangothi Textiles Ltd, Pushpathur Village	Petitioner in RP 198/2002
M/s Sri Krishnavijayam Spinning Mills Pvt... Ltd, Palani	Petitioner in RP 199/2002
M/s Khader Spinners Ltd, Dindigul	Petitioner in RP 200/2002
M/s Karur Srinidhi Yarn Mill Pvt.. Ltd, Karur	Petitioner in RP 201/2002
M/s Sri Rathnagiri Spinners (P) Ltd. Karur	Petitioner in RP 202/2002
M/s G.V.G. Industries Pvt.. Ltd, Dindigul	Petitioner in RP 203/2002
M/s National Sewing Thread Co. Ltd, Chidambaram	Petitioner in RP 204/2002
M/s SMP Textiles Mill (P) Ltd, Chengattampatty	Petitioner in RP 205/2002
M/s Sterling Spinners Ltd, Vedaundur	Petitioner in RP 206/2002

M/s Amaravathy Spinning Mills Ltd, Karur	Petitioner in RP 207/2002
M./s. Senthil Spinners Pvt.. Ltd, Kallipatti	Petitioner in RP 208/2002
M/s Royal Chlorates (P) Ltd, Kovilpatti	Petitioner in RP 209/2002
Sri Kaderi Ambal Mills Pvt.. Ltd, Shanmughanathapuram	Petitioner in RP 210/2002
M/s Vijayasree Spinning Mills Pvt.. Ltd, Unit II Dindigul	Petitioner in RP 211/2002
M/s Sri Vinayaga Textiles, Sukkamanaickenpatty	Petitioner in RP 212/2002
M/s Gugan Textiles Mills Pvt.. Ltd, Vedasundur	Petitioner in RP 213/2002
M/s Bharani Spinning Mills Pvt.. Ltd, Vedasundur	Petitioner in RP 214/2002
Ramesh Conductors Pvt.. Ltd, Gunur	Petitioner in RP 215/2002
M/s Jayasree Cables and Conductors Pvt. Ltd, Gunur	Petitioner in RP 216/2002
M/s Time Packaging Pvt.. Ltd, Hosur	Petitioner in RP 217/2002
M/s Elkaypee Spinners Pvt.. Ltd, Vedasundur	Petitioner in RP 218/2002
M/s Thuram Spinning Mills Pvt.. Ltd, Vedasundur	Petitioner in RP 219/2002
M/s Centwin Textiles Mills Pvt.. Ltd, Vedasundur	Petitioner in RP 220/2002
Alvittas Electricals Pvt.. Ltd, Chennai	Petitioner in RP 221/2002
Rohini Mills, Indiampalayam	Petitioner in RP 222/2002
Chola Spinning Mills Pvt.. Ltd, Vepadi	Petitioner in RP 223/2002
South India Small Spinners Association, Coimbatore	Petitioner in RP 224/2002
Natchiar Spinning Mills Pvt.. Ltd, Chatrapatti	Petitioner in RP 225/2002
Sindhu Spinning Mills Pvt.. Ltd, Karadivavi	Petitioner in RP 226/2002
M/s Thirupur Surya Textiles (P) Ltd, Vedasundur	Petitioner in RP 227/2002

M/s Sri Muthu Saravana spinning Mills Pvt.. Ltd, Anaipalayam	Petitioner in RP 228/2002
M/s Namakkal Cotton Mills Pvt.. Ltd Namakkal	Petitioner in RP 229/2002
Sri Kumaran Mills Ltd, Coimbatore	Petitioner in RP 230/2002
G.V.D. Textiles Pvt.. Ltd, Coimbatore	Petitioner in RP 231/2002
Agro Seeds Processing Unit, Punjaipuliampatti	Petitioner in RP 232/2002
Aruna Machine Tools, Ulaganeri Vill	Petitioner in RP 233/2002
K.K.P.Textiles Ltd, Namakkal	Petitioner in RP 234/2002
K.K.P. Spinning Mills Ltd, Namakkal	Petitioner in RP 235/2002
M/s Goodwill Textiles Mills Pvt.. Ltd, Minukkampatti	Petitioner in RP 236/2002
M/s Rockwell textiles, A.Kalayamputhur	Petitioner in RP 237/2002
M/s Global Yarn Spinners Sriramapuram	Petitioner in RP 238/2002
M/s Karialli Amman Spinning Mills Pvt.. Ltd, Erode	Petitioner in RP 239/2002
M/s Sri Skanda Spinners, Thalaiyuthu	Petitioner in RP 240/2002
M/s Sri Dorairaj Spintex, Palani	Petitioner in RP 241/2002
The Sri Ganapathy Mills Co. Ltd, Tirunelveli	Petitioner in RP 242/2002
The Sri Ganapathy Mills Co. Ltd, B Unit, Virudhunagar	Petitioner in RP 243/2002
M/s HMI Industries, Pervallur	Petitioner in RP 244/2002
M/s Hargobind Steel Industries, Azhinjivakkam	Petitioner in RP 245/2002
Eastman Spinning Mills (P) Ltd, Viduthalaipatti	Petitioner in RP 246/2002
Madurai Spinners Association Madurai.	Petitioner in RP 247/2002

Jeyavarma Textiles (P)Ltd., Getticheviyur.	Petitioner in RP 248/2002
Thirumathi Muthammal Textiles (P)Ltd., Trichy-1	Petitioner in RP 249/2002
M/s.L.G.Balakrishnan & Brothers Karur	Petitioner in RP 250/2002
Amarjothi Spinning Mills Ltd., (S.C.No.36), Tiruppur.	Petitioner in RP 251/2002
Amarjothi Spinning Mills Ltd., (S.C.No.85) Tiruppur	Petitioner in RP 252/2002

VERSUS

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| <p>1. The State of Tamil Nadu Represented
by its Secretary to Government, Energy
Department, Chennai</p> <p>2. The Tamil Nadu Electricity Board,
Represented by its Chairman,
Anna Salai, Chennai.</p> |  | <p>Respondents in all Revision
Petitions</p> |
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These Revision Petitions coming on for final hearing before us on 30TH September, 21st, and 23rd day of October 2002, in the presence of :

<u>Sl.No.</u>	<u>Advocates</u>	<u>For Revision Petitioners</u>
1	Tvl. C.S.Krishnamoorthy & K. Sheshadri	RP Nos.1 to10, 12 to 20,22, 35 to 38, 106 to 112 &178 of 2002.
2	Tvl.R.S.Pandiyaraj & P.S.Vasanthakumar	RP Nos. 11, 24 to 28, 30 to 34, 46 to 49, 66 to 78, 92 to 96, 102 to 104, 124 to129, 143 to155, 179 to 196, 198 to 208, 211 to 214, 218 to 220, 222, 223, 225 to 229, 236 to 243, 246 & 248 to 252 of 2002.
3.	Tvl. S. Sivanandam and R. Ramakrishnan	RP Nos. 21, 156 and 163 of 2002
4.	Thiru V.Rangabashyam	RP Nos. 23,105 & 130 to 142 of 2002
5.	Tvl. K.Jayachandran, K.Subashchandran & T.Sundaranathan	RP Nos. 39 to 45, 113 to 123 & 166 of 2002

6	Tvl. Palani Selvaraj & V.Vijayshankar	RP Nos. 50 to 65, 230 to 232 & 247 of 2002
7	Tvl. Muthumani Doraisamy , Kandavadivel Doraisamy & P.Senthil Kumar	RP Nos. 79 to 91, 97 to 99, 167 to 177, & 197 of 2002
8	Tvl. Aiyar & Dolia & K.Rathinam	RP Nos. 100,101 & 158 of 2002
9	Tvl.M.Kamalanathan, R.Kamaraj & K.Gokul	RP Nos. 157, 162, 209, 210, 224 & 233 of 2002
10	Tvl.V.Barathidasan & M.M.Sundresh & T.Rama	RP Nos. 159 to 161 of 2002
11	Tvl. S.Silambannan, N.Umapathy, A.P. Pasupathy & S. Kalimuthu	RP Nos, 164 & 165 of 2002
12	Tvl. S.N.Kirupanandam & Balakrishnan	RP Nos. 217 of 2002
13	Tvl. T.S.Sivagnanam, P.M.Bakthavathsalam & S.Ravichandran	RP, Nos 244 & 245 of 2002

Ennore Foundries Limited, Ennore	} RP Nos. 29, 215, 216, 221, 234, & 235 of 2002 respectively appearing in person.
Ramesh Conductors Pvt.. Ltd, Gunur,	
M/s Jayashree Cables & Conductors Ltd. Gunur	
Alvittas Electricals Pvt.. Ltd /Chennai	
K.K.P Textiles Ltd/ Namakkal & K.K.P Spinning Mills Pvt.. Ltd/ Namakkal	

Thiru Jayanathan, Advocate and City Government Pleader for the 1st Respondent and Thiru G.Vasudevan, Advocate for the 2nd Respondent, having perused the Petitions, Counters, Additional Counters and connected papers and having heard the arguments of both sides and having stood over for consideration till this day, this Commission deliver the following **COMMON ORDER.**

COMMON ORDER

1. Prayer by the Revision Petitioners

The prayer in R.P. Nos. 1 - 10, 12 - 20, 22, 23, 35 - 38, 39 - 45, 100, 101, 105 - 123, 130 - 142, 158, 166, 178 and 217 is to fix the tariff under sections 22 and 29 of the Electricity Regulatory Commissions Act, 1998 (Act 14 of 1998) (hereinafter shortly referred to as ERC Act) and not to enforce the tariff fixed by the Government under G.O. Ms.No. 95 Energy Department, dated 28.11.2001. The prayer in RP Nos. 11, 24-28, 30-34, 46-49, 66-78, 92-96, 102-104, 124 -129, 143-155, 179-196, 198-208, 211-214, 218-223, 225-229, 234-246 and 248-252 is to fix the tariff under sections 22 and 29 of the ERC Act. The prayer in R.P. Nos. 21, 156 and 163 is to fix the tariff for HT consumers from 1.12.2001 and stay on increased tariff of HT consumers pursuant to G.O. Ms.No. 95 Energy Department, dated 28.11.2001. The prayer in RP Nos. 21, 156 and 163 is to fix the tariff for HT consumers from 1.12.2001 in lieu of tariff rates fixed in G.O. Ms. No. 95, Energy Department, dated 28.11.2001. The prayer in RP No. 29 is reduction in the demand charges and to fix the tariff under sections 22 and 29 of the ERC Act and to accept bank guarantee for electricity deposit in lieu of existing cash deposit. The prayer in R.P. Nos. 50 to 65, 159 to 161, 230 to 232 and 247 is to fix the tariff under section 22 & 29 of ERC Act and to call for the records relating to the order of the first respondent in G.O. Ms. No. 95 dated 28.11.2001 and to set aside the same. The prayer in R.P. Nos. 79 to 91, 97 to 99, 157, 162, 167 to 177, 197, 209, 210, 224 and 233 and R.P. Nos. 215, 216 and 221 is to fix the tariff under sections 22 and 29 of the ERC Act. The prayer in R.P. Nos. 164 and 165 of 2002 is to set aside G.O. Ms. No. 95 dated 28.11.2001.

From the above the main relief asked for by the petitioners is that this Commission may be pleased to determine the tariff rates for the consumption of electrical energy in accordance with the provisions of sections 22 and 29 of ERC

in lieu of the State Government fixing the tariff in the impugned G.O. Ms.No.95, Energy Department, dated 28.11.2001.

The petitions mentioned above were taken up for hearing on 30.9.2002, 21.10.2002 and 23.10.2002.

2. Points at issue

The following points at issue arise for consideration of this Commission:

- (a) Whether the Commission is competent to review G.O.Ms. No. 95 Energy Department, dated 28.11.2001 in so far as it relates to quantum of tariff, and whether the judgement of the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission's case is applicable to the instant case and under what authority of law the Commission is empowered to review the tariff already reviewed by the Hon'ble High Court;
- (b) Whether the tariff fixed in G.O. Ms. No. 95 can be said to be in consonance with sections 22 and 29 of ERC Act so as to be valid in law, and whether the tariff rates in G.O. Ms.No. 95 can be said to be arbitrary and unreasonable;
- (c) Whether the tariff fixed in G.O. Ms.No. 95 without hearing the consumers is in consonance with the principles of natural justice and in particular the principle of Audi Alterem Partem;
- (d) Whether there is any need for constitution of Rating Committee as required under section 57-A of the Electricity Supply Act 1948 for fixing the tariff;

The above points at issue are considered in paragraphs 3 to 6 below, each point at issue being considered in separate paragraph.

3. Competence of Commission to review G.O. Ms. No. 95, Applicability of Supreme Court's Judgement in West Bengal Commission's case and authority of law for review

(i) Arguments for Petitioners

Thiru R. Thiagarajan, the Learned Senior Counsel contended that this Commission is competent to review the G.O. Ms.No. 95 in so far as it relates to the quantum of tariff as the Hon'ble High Court in its judgement in the case of Voice Consumer Care Council represented by its trustee Vs. State of Tamil Nadu and another 2002 (3) CTC P1 has not gone into the quantum of tariff which is left open. He referred to the Supreme Court's decision in West Bengal Commission's case and said that after the constitution of this Commission on 17.3.1999 only this Commission is entitled to fix the tariff and G.O. Ms.No. 95 is non-est and unenforceable. He contended that the Tamil Nadu Act 1 of 1979 under which the said G.O. Ms. No. 95 was issued was impliedly repealed by the ERC Act and that the State Government has no power to issue the said G.O. He also contended that the said G.O. being only a subordinate legislation cannot be contrary to ERC Act according to which only this Commission is competent to fix the tariff. He contended that when a power is conferred under a statute namely ERC Act according to which only this Commission is competent to fix the tariff, that power should be exercised only in the manner provided in that statute namely ERC Act. In this connection, he pointed out that as the Commission was constituted on 17.3.1999 the non-performance of functions by the Commission or the non-appointment of Chairperson will not obliterate the existence of the Commission.

He contended that the power to fix tariff under section 22 of ERC Act would include all incidental powers, which are necessary to exercise effectively the power to fix tariff. To a query put by Hon'ble Chairperson as to whether the power under section 22 of ERC Act will include the power to revise the order of a statutory authority under Tamil Nadu Act 1 of 1979, he said that under General

Clauses Act, the Commission has the power to revise the order of the State Government.

Thiru Pandiya Raj, the Learned Counsel, citing the various portions in the Supreme Court's decision in West Bengal Commission's case contended that the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979) has become redundant in view of the enactment of ERC Act and in view of the establishment of this Commission on 17.3.99 and that neither the State Government nor the TNEB is competent to fix the tariff.

Thiru R. Krishnamoorthy, the Learned Senior Counsel representing for Thiru Pandiya Raj and Thiru Rangabashyam, Counsels for certain R.Ps. said that the competence to fix tariff is one thing and justification of levy is another thing. He said that this Commission can now fix the tariff or ascertain whether the tariff already fixed by the State Government in G.O.Ms.No. 95 is reasonable and justifiable. He pointed out that judgement of the Division Bench, of the Hon'ble High Court has given liberty to the petitioners to approach this Commission for relief.

All the Learned Counsels for the petitioners forcefully argued that the Supreme Court's decision in West Bengal Commission's case is applicable to the instant case and that under Article 141 of Constitution of India, it is binding upon this Commission.

(ii) Arguments for Respondents

Replying to the above arguments of the Learned Sr. Counsels of the petitioners, Thiru R. Muthukumaraswamy the learned Addl. Advocate General referred to paragraph 3 of the Hon'ble High Court's judgement which reads as follows:

"In first two writ petitions, the questions raised are not only regarding the power of the State Government to revise power tariff but also regarding the quantum of escalation, as being arbitrary and unreasonable. But during the arguments both M/s. M.M. Vijayan and Sriram Panchu, learned senior counsel

gave up the issue relating to the quantum of escalation of power tariff and confined their arguments on the power and jurisdiction of the State Government in revising power tariff. "

He referred to paragraph 10 of the Judgement of Hon'ble High Court which reads as follows:

"Now, the lis is in a narrow compass as to whether the Commission became functional in terms of the Central Act so as to oust the power and jurisdiction of the State Government to exercise the power under Section 4 of the State Act."

He also referred to the operative portion of the judgement of Hon'ble High Court in paragraphs 13,14, and 15 which are extracted below:

"A full bench judgement dated 6.4.1999 rendered by this Additional Advocate General is relevant in the context of this case. In the said case, arising out of Administrative Tribunal Act, 1985, the writ petition was entertained by this Court in the matter relating to service, which has to be dealt with by the Administrative Tribunal. The Administrative Tribunal was having only a single Administrative Member and in that context it was held that as the Tribunal was not functional, the Hon'ble High Court was having jurisdiction to entertain the writ petition under Article 226 of the Constitution of India. It may be relevant to point out that in view of constitution (42nd) Amendment Act, 1976, Article 323-A was introduced investing the Parliament with power of enacting a law for the Constitution of some Tribunals including Administrative Tribunal and the Supreme Court in L. CHANDRAMUMAR V. UNION OF INDIA (AIR 1997 S.C. 1125), held that the service matter should first be filed before the Administrative Tribunal and only then, the Hon'ble High Courts would be entitled to entertain the writ petition under Article 226 of the Constitution of India at the instance of the aggrieved party. Similar is the situation in the instant case. While there had been in-action on the part of the successive Governments in not making TNERC functional by exercising the powers conferred under the Central Act, we cannot

ignore the public interest involved as there had been necessity to revise the tariff of electrical energy by upward revision to make the electricity supply financially viable.

In view of what is stated supra, we uphold the impugned G.O.Ms.No. 95 and 96, dated 28.11.2001 and 5.12.2001 respectively and dismiss the W.P. Nos. 23807 and 25219 of 2001. We allow W.P.No.25220 of 2001 and direct the State Government to make the TNERC fully functional to act in consonance with the Central Act.

We make it clear that future power revision tariff shall be done only by TNERC. The first respondent shall frame the Rules under Section 57 of the Central Act within a period of 15 days from today. To avoid unnecessary litigation in future, the Chairperson and Member, who are said to have been appointed just the other day, be directed to subscribe oath in accordance with the Rule to be framed as directed above."

While referring to the above observations of the Hon'ble High Court, Madras, reported in 2002 (3) CTC P1 the learned Addl. AG has pointed out that the judgement of the Hon'ble High Court has taken into account the absence of functional role of TNERC during the relevant period when G.O.Ms.No.95 was passed and also public interest for the revision of tariff upwards. While referring to paragraph 3 of the Hon'ble High Court's judgement extracted above, he said that the Hon'ble High Court judgement has covered both aspects namely the power of the Government to issue the G.O. and the quantum of tariff. He contended that in as much as the challenge before the Hon'ble High Court in the W.P. filed relates to quantum of tariff also, the Hon'ble High Court shall be deemed to have considered the above aspect also. Particularly the Hon'ble High Court has observed as "We cannot ignore the public interest involved as there had been necessity to revise the tariff of electrical energy by upward revision to make the electricity supply financially viable". He pointed out that the G.O.Ms.No.95 is traceable to section 4 of Tamil Nadu Act 1 of 1979 and that the

validity of the said G.O. will have to be tested only with reference to the provisions of Tamil Nadu Act 1 of 1979 under which it has been issued and not with reference to the provisions of Central Act 14 of 1998. He said that before the Hon'ble High Court, the HT consumers filed WPs challenging the quantum of tariff and that the petitioners could not point out under what provision of law the petitioners could file the revision of tariff before the Commission. He said that the WPs filed by HT consumers before Hon'ble High Court were withdrawn. He pointed out that so far and even now the petitioners could not point out the authority of law under which these Revision Petitions are filed before this Commission. He stated that in his opinion, the review of G.O.Ms.No.95 which has been already reviewed by the Hon'ble High Court, cannot be again reviewed by this Commission and it is only the Supreme Court which is competent to review the G.O.Ms.No.95 and the judgement of Hon'ble High Court Madras upholding the said G.O.Ms.No.95. He also said if this Commission reviews the said G.O. 95 then it would amount to re-writing the judgement of Hon'ble High Court.

He pointed out that when once the impugned G.O. Ms.No. 95 was upheld by the Hon'ble High Court it cannot be said to be unenforceable. He said that there cannot be an order which is held valid but not enforceable. He referred to paragraph 3 of the Hon'ble High Court's Judgement reported in 2002 (3) CTC p1 wherein the contention of the Learned Sr. Counsel Thiru R. Thiagarajan that G.O. Ms. No. 95 is unenforceable has been considered by the Hon'ble High Court and G.O. Ms.No. 95 was upheld. He also said that in Karnataka and Kerala the tariff rates are low because of the fact that they get electricity mainly from hydel power wherein the cost of production is less. The Learned Addl. AG also said that the TNEB has submitted a proposal for revision of tariff from 1st December 2002, which is under consideration of this Commission. He also pointed out that the tariff rates fixed in G.O.Ms.No.95 cannot be said to be unreasonable even in terms of section 29 of the ERC Act when the tariff rates

fixed by the Commissions in the States of Andhra Pradesh, Maharashtra and Gujarat are higher than the tariff rates fixed in G.O.Ms.No. 95.

The Learned Addl. AG said that the Supreme Court's decision in West Bengal Commission's case is not applicable to the facts of the instant case, which are different from the facts of the case decided by the Hon'ble Supreme Court.

The Learned Addl. AG referred to the proviso to regulation 4(2) of the Tariff Regulations framed by the Commission according to which the existing charges for tariff shall continue until the revised tariff is fixed by the Commission. He said that in terms of the said tariff regulation read with the Hon'ble High Court's judgement the existing tariff under G.O.Ms.No.95 shall continue until the Commission fixes the new tariff in accordance with the provisions of ERC Act.

(iii) Findings of the Commission

As stated by the Learned Addl. AG, the Hon'ble High Court in its judgement reported in 2002 (3) CTCP1 has duly taken into account the absence of functional role of this Commission during the relevant time when the impugned G.O Ms.No.95 was issued by the Government of Tamil Nadu. The following portion of the judgement of Hon'ble High Court in paragraph 13 would be relevant. "while there had been inaction on the part of the successive Governments in not making TNERC functional by exercising the powers conferred under the Central Act, we cannot ignore the public interest involved as there had been necessity to revise the tariff of electrical energy by upward revision to make the electricity supply financially viable."

At paragraph 15 of the judgement in the opening sentence the Hon'ble High Court has made it clear that future revision of power tariff shall be done only by TNERC. The expression "**future power tariff revision**" occurring in the paragraph 15 of the judgement will indicate that this Commission can exercise only future power tariff revision under the ERC Act and that this Commission has nothing to interfere with the past power tariff revision already made in G.O.

Ms.No.95 by the State Government in terms of section 4 of the Tamil Nadu Act 1 of 1979.

It may be stated that as rightly contended by the Learned Addl. Advocate General during the course of his argument, the judgement of Hon'ble High Court referred to above will impliedly cover the quantum of tariff also in view of the fact that the challenge made before the Hon'ble High Court is not only in regard to the power of the State Government to fix power tariff but also in regard to the quantum of escalation as being arbitrary and unreasonable. In this connection, it may be stated that the contention of the Learned Addl. AG, that the order of the Hon'ble High Court which has already reviewed the impugned G.O.Ms.No.95, cannot be reviewed again by this Commission has got force and the Commission is in agreement with this view.

It may be further pointed out that under section 12 of ERC Act read with section 23 this Commission has been conferred with the powers of a Civil Court while discharging its functions under sections 22 and 29 of the ERC Act. According to section 12 (f) of the ERC Act, this Commission has been conferred with the powers of a Civil Court only to review its decisions, directions and orders and the said power does not extend to review the orders issued in impugned G.O.Ms.No.95 passed by the State Government. The contention put forth by Learned Senior Counsel Thiru R. Thiagarajan that by virtue of General Clauses Act, this Commission has got the power to review G.O.Ms.No. 95 is not acceptable in view of the fact that the notification fixing the tariff rates was issued only by the State Government and not by this Commission and only the State Government by virtue of the General Clauses Act, can review its orders. In this connection, the contention of the Learned Addl. AG that the validity of G.O.Ms.No.95 can be tested only with reference to the provisions of Tamil Nadu Act 1 of 1979 under which it was issued and that it cannot be tested with reference to the provisions of ERC Act has got force and it is accepted by this Commission. It may be stated that this Commission while determining tariff under

the provisions of sections 22 and 29 of ERC Act, cannot review or revise the tariff rates fixed by State Government under Tamil Nadu Act 1 of 1979 as the power to determine the tariff as conferred upon this Commission under sections 22 and 29 of ERC Act does not extend to reviewing or revising the orders passed by the State Government under a different statute. Further it may be stated that if this Commission seeks to review the G.O. Ms.No.95 which has been held to be valid by the Hon'ble High Court in its judgement referred to above, then, it would amount to re-writing the judgement of Hon'ble High Court itself as rightly pointed out by the Learned Addl. AG. Moreover, such a course of action could even amount to contempt of the Hon'ble High Court.

As rightly pointed out by the Learned Addl. AG that the Hon'ble Division Bench of Hon'ble High Court, Madras in the case of **Shanmugaraja Spinning Mills (P) Ltd. vs. The Superintending Engineer (i/c) Periyar Electricity System, Erode (2002 I M.L.J.285)** has held that the State Government has the power to amend the schedule of Tamil Nadu Act 1 of 1979 which relates to the fixation of tariff and that the said power to amend the schedule to the Act is a conditional legislation. In view of the said decision of the Hon'ble High Court as well as the Judgement of the High Court, Madras reported in 2002 (3) CTC P1, this Commission has no power to review the G.O. Ms. No. 95 in so far as it relates to quantum of tariff.

We are inclined to agree with the contention of the Learned Addl. AG that the Supreme Court's decision in West Bengal Commission's case is not applicable to the instant case for the following reasons namely (1) firstly in the State of West Bengal there is no Act similar to Tamil Nadu Act 1 of 1979 under which the State Government has fixed the tariff by the impugned G.O. Ms.No.95; (2) secondly in the case decided by the Hon'ble Supreme Court, the West Bengal Electricity Regulatory Commission (WBERC) was fully functional and the tariff was fixed by the WBERC under the ERC Act itself and that the Hon'ble High Court, Calcutta has denied this power of the WBERC to fix the tariff under the

ERC Act whereas in the instant case, the Hon'ble High Court has held that this Commission was not made functional during the relevant time when the G.O.Ms.No.95 was issued and that the Hon'ble High Court has made it clear that "future power revision" should be made only by this Commission under the ERC Act and that the Hon'ble High Court Madras has not denied the power of this Commission to fix the tariff under the ERC Act in future and (3) thirdly in the instant case the main point at issue is whether this Commission has got the power to review an order fixing the tariff passed by the State Government under another statute whereas the point at issue in the case decided by the Hon'ble Supreme Court is different.

Regarding the authority of law under which this Commission is empowered to review G.O. Ms. No. 95, it may be stated that all the Review Petitions mentioned above have been filed before this Commission under Regulation 4 of the Tamil Nadu Electricity Regulatory Commission - Conduct of Business Regulations 2002 read with section 22 of ERC Act. The said Regulation 4 only relates to the language of the proceedings of the Commission. Section 22 of ERC Act also relates to determination of tariff. As rightly pointed out by the Learned Addl. AG, the petitioners have not convinced this Commission with reference to authority of law under which this Commission has been empowered to review the orders passed by the State Government.

4. Compliance with the provisions of sections 22 and 29 of ERC Act and arbitrariness and unreasonableness in determination of tariff

(i) Arguments for petitioners

The Learned Sr. Counsel Thiru R. Thiagarajan contended that G.O. Ms.No. 95 which has not followed sections 22 and 29 of ERC Act is not valid in law as it is arbitrary. Thiru Pandiya Raj, the Learned Counsel for certain petitioners, argued in support of the above contention.

While referring to Supreme Court's decision reported in 2001 5 SCC P 664, (Tandon Brothers vs. State of West Bengal), Thiru R. Krishnamoorthy, Learned Sr. Counsel argued that the fixation of tariff made in G.O. Ms. No. 95 is arbitrary and unreasonable and it is not based on sufficient materials so as to justify the increased tariff made in the said G.O. Ms. No. 95. He also pointed out that the Government should compensate the TNEB in regard to the free supply to agriculturists and the burden can not be passed on HT consumers.

(ii) Arguments for Respondents

The Learned Addl. AG has pointed out that the G.O. Ms.No. 95 had to be tested only with reference to terms of the provisions contained in Tamil Nadu Act 1 of 1979 and that it cannot be tested with reference to sections 22 and 29 of the ERC Act. While referring to section 29(3) of ERC Act, he contended that while determining the tariff the Commission shall not show undue preference to any consumer but may differentiate according to consumer's load factor, power factor, total consumption of energy, geographical position of any area, the nature of supply and the purpose for which the supply is required. He further stated that even this Commission would differentiate the consumers on the above grounds of differentiation specified in the said section 29 (3) of ERC Act in regard to determination of tariff.

With reference to the point at issue namely whether the tariff revision in G.O. Ms. No. 95 is arbitrary and unreasonable, the Learned Addl. AG has referred to a Comparative Statement of tariff rates prevalent in the States of Tamil Nadu, Andhra Pradesh, Maharashtra, Karnataka and Gujarat filed before this Commission as Exhibit R1 and pointed out that the tariff rates fixed in G.O. Ms. No. 95 cannot be said to be arbitrary and unreasonable when compared to the tariff rates fixed by the Commissions in the States of Andhra Pradesh, Gujarat and Maharashtra. He also said that in Karnataka and Kerala the tariff rates are low because of the fact that they get electricity mainly from hydel power wherein the cost of production is less. The Learned Addl. AG also said that the

TNEB has submitted a proposal for revision of tariff with effect from 1st December 2002, which is under the consideration of this Commission. He also pointed out that the tariff rates fixed in G.O.Ms.No.95 cannot be said to be unreasonable even in terms of section 29 of the ERC Act when the tariff rates fixed by the Commissions in the States of Andhra Pradesh, Maharashtra and Gujarat are higher than the tariff rates fixed in G.O.Ms.No. 95 which also largely depend upon Thermal power like Tamil Nadu. Referring to a statement of Additional Revenue due to Tariff Revision for a full year filed as Exhibit R2 he also said that the increase of tariff made in the impugned G.O.Ms.No. 95 is only 7.22% for HT consumers whereas it is 36% for domestic consumers. Thus the burden of increase is shifted not only to HT consumers but also to other categories of consumers.

(iii) Findings of the Commission

With reference to the above point at issue, we are inclined to agree with the contention put forth by the Learned Addl. AG that the validity of G. O. Ms. No. 95 which has been issued under section 4 of the Tamil Nadu Act 1 of 1979 has to be tested only with reference to the terms of the provisions contained in the said Tamil Nadu Act 1 of 1979 and not with reference to the provisions contained in sections 22 and 29 of the ERC Act.

We are also inclined to agree with the argument of Learned Addl. AG that the tariff rates as fixed in G.O. Ms.No. 95 when compared to the tariff rates fixed by the Commission in the States of Andhra Pradesh, Gujarat and Maharashtra are low and they cannot be said to be arbitrary and unreasonable.

In this connection it may be stated that what has to be borne in mind is that on 21.10.2002 when the Learned Addl. AG referred to a comparative statement showing that the tariff rates fixed in G.O. Ms. No. 95 are less than those tariff rates fixed by the Commissions in the States of Andhra Pradesh, Gujarat and Maharashtra, the Counsels for the Petitioners complained that the above statement was not furnished to them previously and that they should be

given time to go through the statement and meet the argument of Learned Addl. AG and hence they wanted an adjournment. Accordingly, the hearing was adjourned to 23.10.2002. It is seen that copies of the above comparative statement referred to by Learned Addl. AG were furnished to the Counsels for the petitioners. On 23.10.2002, none of the Counsels for Petitioners have challenged the information furnished in the Comparative Statement referred to by the Learned Addl. AG. From the above, it could be seen that the objections to the quantum of tariff that it is arbitrary and unreasonable are not substantiated by the Learned Counsels for the Petitioners.

5. Principles of Natural Justice and Audi Alterem Partem

(i) Arguments for Petitioners

Thiru R. Thiagarajan, Learned Sr. Counsel has stated that the principle of Audi Alterem Partem has been reiterated in page 96 of the Supreme Court's decision in West Bengal Commission's case and that this principle was flouted in G.O. Ms.No. 95 which is issued without hearing the consumers. He cited the decision of Supreme Court in AIR 1981SC p 818 (Swadeshi Cotton Mills Case) and said G.O.Ms.No.95 was issued in violation of principles of natural justice. Thiru P. Pandiya Raj, Learned Sr. Counsel appearing for certain petitioners contended that since the commencement of ERC Act, which stipulates that it is mandatory to be transparent in purchase of power, in the supply of power, the consumers should have been heard before the G.O. Ms. No. 95 was issued and the non-hearing of the consumers would vitiate the G.O. Ms. No. 95. Thiru R. Krishnamoorthy, the Learned Sr. Counsel stated that the nature of the enquiry by the Commission is public and transparent in taking decision on the need to increase the tariff.

(ii) Arguments for Respondents

Thiru R. Muthukumaraswamy, the Learned Addl. AG said that the tariff notification issued under G.O. Ms. No. 95 was issued under section 4 of Tamil Nadu Act 1 of 1979 which gave power to the State Government to amend the

schedule relating to the tariff rates from time to time and that the schedule which relates to the fixation of tariff rates forms part and parcel of the Act itself. He referred to the decision of the Division Bench of High Court, Madras reported in 2002 I M.L.J P 285 and said that the Hon'ble High Court has held that section 4 of Tamil Nadu Act 1 of 1979 is a conditional legislation and that the principles of natural justice are not applicable to the implementation of section 4 of Tamil Nadu Act 1 of 1979 by the State Government.

(iii) Findings of the Commission

With reference to the above point at issue, it may be stated that in view of the decision of the Division Bench of Hon'ble High Court, Madras in the case of **Shanmugaraja Spinning Mills (P) Ltd. vs. The Superintending Engineer, Periyar Electricity System, Erode (2002 I M.L.J.285)** as cited by the Learned Addl. AG this Commission is of the view that the principles of natural justice are not applicable to the fixation of tariff under the schedule to Tamil Nadu Act 1 of 1979 read with section 4 of the said Act.

6. Rating Committee

(i) Arguments for Petitioners

All the counsels for the petitioners argued that the G.O. Ms.No. 95 in fixing the tariff without constituting the Rating Committee as required under section 57-A of the Electricity (Supply) Act, 1948 is not valid in law.

(ii) Arguments for Respondents

The Learned Addl. AG has pointed out that the said section 57-A is applicable only for licencees and that it is not applicable to TNEB as the definition of 'licencee' in section 2 (6) of the Electricity (Supply) Act, 1948 specifically excludes the Board.

(iii) Findings of the Commission

With reference to the above point at issue, it may be stated that as rightly contended by the Learned Addl. AG, the constitution of Rating Committee as

contemplated under section 57-A of the Electricity (Supply) Act, 1948 will apply only to licencees and it is not applicable to the Board as the definition of "licencee" in section 2(6) of the Electricity (Supply) Act, 1948 specifically excludes the Board. Further under section 29 (6) of the ERC Act itself, no Rating Committee shall be constituted after the date of commencement of the ERC Act. Moreover, this point at issue is not relevant in view of the fact that the tariff made in G.O. Ms. No. 95 was fixed by Government under the Tamil Nadu Act 1 of 1979 wherein no Rating Committee has been contemplated.

7. Findings of this Commission with reference to the point at issue raised by Learned Counsel Thiru Sivanandam as to whether this Commission has the power to fix the tariff with retrospective effect from 1.12.2001

On 23.10.2002, the Learned Counsel, Thiru Sivanandam after the reply argument made by the Learned Addl. AG raised a point in issue namely this Commission can now fix the tariff with retrospective effect from 1.12.2001. Regarding this point in issue it may be stated that this Commission cannot fix the tariff with retrospective effect from 1.12.2001 because of the following reasons that:-

- (1) Firstly, the issue of such a retrospective notification will have the effect of superseding the tariff notification issued in the impugned G.O. Ms.No. 95 which has been upheld by the Hon'ble High Court, Madras and
- (2) Secondly according to the proviso to regulation 4(2) of the Tamil Nadu Electricity Regulatory Commission Tariff Regulation 2002 as referred to by the Learned Addl. AG during the course of his arguments, the existing tariff in G.O. Ms. No. 95 will have to continue till the new tariff is determined by the Commission.

8. Conclusion

In the above circumstances, this Commission is unable to accept all the contentions put forth by the Learned Counsels for the petitioners with reference

to the above points at issue and they are rejected. However, in this connection, it may be stated that as held by the Hon'ble High Court, Madras future power tariff revision shall be made only by this Commission under the ERC Act. This Commission has taken up the proposal of the TNEB for revision of tariff with effect from 1st December 2002 for consideration under the ERC Act. All the Revision Petitioners referred to above have got every right to present their views and raise objections before this Commission to the proposed tariff revision petition filed by TNEB. With the above observation, all the RPs., related stay petitions and direction petitions are dismissed without costs.

Pronounced in Open Court by the Commission on 31st October 2002.

Sd./..... (E.C. ARUNACHALAM) Member	Sd./..... (S. THANGARATHNAM) Member	Sd./..... (A. BALRAJ) Chairman
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List of Witnesses examined

NIL

List of Exhibits marked

For Petitioners

NIL

For Respondents

NIL

By Commission

Ex.R-1 **Comparative statement showing the existing tariff rates in States of Tamil Nadu, Gujarat, Maharashtra and Karnataka.**

Ex.R-2 **Statement showing the percentage of increase for the various categories of consumers as per impugned G.O. Ms. No.95 dated 28.11.2001.**

Sd./..... (E.C. ARUNACHALAM) Member	Sd./..... (S. THANGARATHNAM) Member	Sd./..... (A. BALRAJ) Chairman
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/True Copy/

**Secretary
Tamil Nadu Electricity
Regulatory Commission
Chennai 600 018.**