

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

25th DAY OF SEPTEMBER 2003

CORUM:

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

and

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

Tariff Revision Petition Nos. 3/2003 to 5/2003

Petitioners:

Sri Jagannatha Spinners,
represented by its Managing
Partner Mr. J. Vijaya Kumar,
Coimbatore. Petitioner in TRP 3 / 2003

Mr. C. Jagannathan, Proprietor
Sri Jagannath Processors,
Coimbatore. Petitioner in TRP 4 / 2003

Sri Swamy Textiles, represented
by its Managing Partner
Mr. C. Senthil Kumaravel,
30, K.A.R. Mill Road,
Somanur-641 668. Petitioner in TRP 5 / 2003

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-2. 1st Respondent in all TRPs

2. The Superintending Engineer,
Coimbatore Electricity Distribution
Circle (Metro), Coimbatore. 2nd Respondent in TRP Nos.
3 / 2003 & 4 / 2003.

3. The Superintending Engineer,
Coimbatore Electricity
Distribution Circle (South),
Coimbatore. 2nd Respondent in TRP
No. .5 / 2003

These Tariff Review Petitions coming on for final hearing before us on 17th day of September, 2003 in the presence of Tvl. M. Kamalanathan and R. Kamaraj, Advocates for the petitioners in all the Tariff Review Petitions. Thiru G. Vasudevan, Advocate for the Respondents in all the Tariff Review Petitions having perused the Petitions, Counter Affidavits and other documents and having heard the arguments of both sides and having stood over for consideration till this day, this Commission deliver the following

COMMON ORDER

1. Prayer by the Tariff Review Petitioners:

The prayer in TRP No. 3 of 2003 is that this Hon'ble Commission may be pleased to treat the Petitioner under L.T. Two Part Tariff Regular with HT charges and pass such further or other orders as this Hon'ble Commission may deem fit and proper in the circumstances of the case and thus render justice. The prayers made in TRP Nos. 4 of 2003 and 5 of 2003 are the same as the prayer in TRP No. 3 of 2003.

2. Facts of the case as set out in the Petitions, Counter Affidavits of the Petitioner as well as in the Counter Affidavits of Respondents:

The facts of the case in TRP No. 3 of 2003 are briefly as follows:

The State Government in G.O. Ms. No. 29 dated 31.1.95 have introduced Alternative Industrial Installation having connected load of 75 KVA and above but not exceeding 150 KVA, demand charges was fixed at Rs.100/- per KVA per month plus energy charges at 240 paise per KWH per month. On the basis of the above G.O., the 1st Respondent namely the TNEB had issued in Per. B.P.(FB) 261 dated 25.7.95 introducing Alternative Two Part Tariff under LT Tariff IV. The Petitioner applied before the 2nd Respondent for availing L.T. Two Part Alternate Tariff under L.T. Tariff IV. The 2nd Respondent had sanctioned the same. The Petitioner had entered into an agreement on

payment of Rs.54,650/- as Development Charges, Service Connection charges and meter caution deposit with the 1st Respondent under section 5 of Electricity Supply Act 1948 and the sanctioned load had been transferred to LT Two Part Tariff. To avail the supply, the Petitioner spent more than Rs. one lakh to construct separate meter room, cable and installation charges, etc. The said agreement has been duly signed by the 2nd Respondent for and on behalf of the 1st Respondent. The Petitioner states that the change of Tariff, is also in consonance with Clause 4.02 of Tamil Nadu Electricity Board's Terms and Conditions of Supply of Electricity under the heading "**Categories of Supply**". As per clause 22.8 of Terms and Conditions the Low Tension Current Transfer Services with the electronic meter has been fixed for the Petitioner's factory. Only thereafter the request for opting for Alternate Two Part Tariff was accepted and granted and current consumption charges has been charged as Alternate Two Part Tariff. While so, this Commission by Tariff Order dated 15.3.2003 had merged the Alternate Two Part Tariff with Low Tension Tariff III B Regular. The main intention of this Hon'ble Commission is to reduce the number of slabs in each Consumer Category as per the finding of this Commission in Chapter 1.4.3. The Petitioner on 16.4.2003, 10.5.2003 and 19.5.2003 informed the Hon'ble Commission to refix the Tariff under LT Two Part Tariff with HT charges as existing before 15.3.2003. On 20.5.2003 this Hon'ble Commission directed the Petitioner to file petition before the Hon'ble Commission. The Petitioner therefore filed the above petition.

The facts in TRP Nos. 4 of 2003 and 5 of 2003 are almost identical with the facts as set out in TRP No. 3 of 2003, which have been summarised above.

The contentions put forth by the 1st and 2nd Respondents in their Common Counter filed to the Petition in TRP No. 3 of 2003 are summarised as follows:

- (a) Under the Electricity Regulatory Commissions Act, 1998 (Act 14 of 1998) under which the Tariff Order was passed by this Hon'ble Commission it is not required to communicate the Order to each consumer as there are more than 150 lakh consumers in TNEB and the said Order has been published in leading newspapers both in English and Tamil by this Hon'ble Commission besides the said order was made available in website of TNEB (www.tneb.org) and this Hon'ble Commission's website (www.tnerc.org) from 20th March 2003.
- (b) As the Petitioner can avail LT service upto 150 HP, the Petitioner need not go for HT service and as such the space constraints and financial constraint to keep separate transformer as alleged by the Petitioner does not arise.
- (c) As requested by the Petitioner, the Petitioner was exempted from the shifting of existing metering point of supply as a special case and therefore the Petitioner's contention that they have spent more money for constructing separate meter room, cable and insulation charges is false and incorrect and misleading.
- (d) As per clause 7 of the agreement for supply of energy as entered into by the Petitioner with the TNEB, the Board shall have the right to vary from time to time the tariffs general and miscellaneous charges and the terms and conditions of supply.
- (e) If the service of the Petitioner had not been converted to LT Two Part Tariff then the Petitioner has to be governed only under LT III-B Industrial and not under HT Tariff rates.

The Counter Affidavits filed in TRP No. 4 of 2003 and 5 of 2003 are the same as filed in TRP No. 3 of 2003 referred to above.

3. Points at issue:

From the pleadings of the cases referred to in paragraph 2 above, the following issues arise for consideration of this Commission. viz.:-

- (1) Whether the Tariff Order of this Commission in so far as it relates to the merger of the Alternate Two Part Tariff of the Petitioners in the above Tariff Revision Petitions can be said to be arbitrary as alleged by the Petitioners?
- (2) Whether the Tariff Order of this Commission is a speaking order or not?
- (3) Whether the Tariff Order of this Commission can be said to be violative of the principles of Audi Alterem Partem?
- (4) Whether this Commission has got the power to order for the merger of the Alternate Two Part Tariff of III B with the LT Tariff III B even though the TNEB has not proposed for such merger in their Tariff Petition 1 of 2002.
- (5) Whether this Commission while passing the Tariff Order ought to have consulted an Expert Committee like the Rating Committee constituted under the Electricity (Supply) Act 1948?

Each of the above points at issue are examined separately in the following paragraphs by this Commission and the findings of this Commission are given thereon:-

4. Point at issue No. 1 in paragraph 3 above viz. whether the Tariff Order of this Commission is so far as it relates to the merger of the Alternate Two Part Tariff of the Petitioners in the above Tariff Revision Petition can be said to be arbitrary as alleged by the Petitioners?

(i) Arguments of the Petitioners:

Thiru M. Kamalanathan, the Learned Counsel appearing for all the three Petitioners in the above TRPs has not substantiated the allegation of arbitrariness in his arguments advanced for the Petitioners on 17.9.2003.

(ii) Arguments of the Respondents:

Thiru Vasudevan, Learned Counsel for the Respondent contended that this Hon'ble Commission has got the power to fix the tariff under the ERC Act.

(iii) Findings of this Commission:

The legal meaning of the expression "**Arbitrary**" at page 68 of the Mitra's Legal & Commercial Dictionary (Fifth Edition) is extracted below for the sake of reference.

"Arbitrary: Arising from will or caprice, arrived at random and without reason; not just or proper; not according to law or practice."

From the above, it would be seen that the action of this Commission would be arbitrary only if it is not according to law or practice. The preamble to the Electricity Regulatory Commissions Act, 1998 wherein the objects of the Act are set out reads as follows:-

"An Act to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalisation of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith or incidental thereto."

From the above preamble, it would be seen that rationalisation of electricity tariff is one of the objects of the Act which has to be achieved by this Commission while exercising its statutory functions of determination of tariff under the Act. The expression "**for matters connected therewith or incidental thereto**" occurring in the above preamble to the ERC Act would be significant. The merger of Alternate Two Part Tariff is a matter connected with the object namely "**rationalisation of electricity**" tariff, which the Act seeks to achieve.

At paragraph 1.4.3 at page 16 of the Tariff Order, this Commission has observed as follows:

"Rationalisation of existing tariff to meet the requirements of Act Provisions - If the Act provisions and the existing tariff structure of TNEB are compared it may be seen that rationalisation of existing tariff structure boils down to three areas. Firstly, the number of slabs in each consumer category should be reduced."

Again at page 35 of the Tariff Order this Commission has expressed the need for rationalisation of tariff structure. The following portion of the Tariff Order would be relevant.

"This Commission is of the opinion that the existing tariff structure of TNEB should be rationalised. The objectives of the existing tariff structure would be to reduce the number of slabs for each consumer category."

Again at paragraph 7.6 at page 166 of the Tariff Order, this Commission has given valid reason for such rationalisation of tariff structure. The following observations in the Tariff Order would be relevant namely:

"Rationalisation of Categories - The TNEB has not proposed any rationalisation of categories and slabs in its Tariff Petition. However, the Commission is of the view that the number of categories and slabs should be reduced to the maximum possible extent, to simplify the administration of the tariff and reduce the confusion in the minds of the consumers."

The above extracts of the Tariff Order would amply prove that this Commission's Order of merger aims at rationalisation of tariff structure which is one of the objects of the Act and that the action of this Commission cannot be assailed as arbitrary. This Commission has

given valid and convincing reasons for its policy decision to reduce the number of categories and the slabs in each category of consumers.

5. Point at issue No. 2 in paragraph 3 above viz. whether the Tariff Order of this Commission is a speaking order or not?

(i) Arguments of the Petitioners:

Thiru M. Kamalanathan, Learned Counsel for Petitioners has contended that except at pages 35 and 194 of the Tariff Order, this Commission has given no valid reason. He argued that the order of this Commission cannot be said to be a speaking order.

(ii) Arguments of the Respondents:

Thiru Vasudevan, Learned Counsel for Respondents contended that the ERC Act gives power to this Commission to determine the tariff.

(iii) Findings of this Commission:

The Learned Counsel for the Petitioners has failed to note that paragraph 7.6 at page 166 of the Tariff Order extracted above has given valid reason for the decision of this Commission for the rationalisation of tariff and hence the order of this Commission is a speaking order.

6. Point at issue No. 3 in paragraph 3 above viz. whether the Tariff Order of this Commission can be said to be violative of the principles of Audi Alterm Partem?

(i) Arguments of the Petitioners:

Thiru M. Kamalanathan, Learned Counsel for Petitioners has contended that the object of the ERC Act is to protect the consumer's interest. He pointed out that in Coimbatore District, the number of Alternate Two Part Consumer like the Petitioners is only ten and this Commission ought to have given an opportunity to them to offer their views. He cited a Supreme Court's decision in **Neelima Misra Vs. Harinder Kaur Paintal (AIR 1990 SC 14.2)** and said that an

administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim audi alteram partem and the order of this Commission does not comply with the above principle.

(ii) Arguments of the Respondents:

Thiru G. Vasudevan, Learned Counsel for the Respondents contended that under the ERC Act, this Hon'ble Commission has got the power to order for the rationalisation of the tariff structure.

(iii) Findings of this Commission:

This Commission has held public hearings in various places after publishing the notice of hearing in the leading Newspapers. This Commission has also given wide publicity to the Tariff Petition of TNEB in the leading Newspapers and invited the public to send their views / objections to the Tariff Petition as required under TNERC Conduct of Business Regulations 2002. As set out in section 37 of the ERC Act, this Commission has strictly adopted transparency in all its proceedings relating to the Tariff Petition. The Petitioners have not availed of the opportunities given to the general public in regard to the Tariff Petition. In this connection, it would be relevant to point out that in the Tariff Order of this Commission, it would be seen that on many places, there are references to the objections / views put forth by various individual consumers in regard to the Tariff Petition of TNEB. This would amply prove that several individual consumers have availed of the opportunities given to them by this Commission for offering their views in the public hearings of this Commission, whereas the Petitioners have not availed of the opportunities for the participation in public hearing of this Commission held at Coimbatore.

The Petitioners cannot complain of denial of any reasonable opportunity for offering their views which have been already given by this Commission.

Further in this connection, it may be pointed out that the Hon'ble Supreme Court in **West Bengal Regulatory Commission vs CEST Ltd. (2002 8 SCC p 715)** has interalia considered the scope of the right of the consumers to represent before the Commission. The following portion of the judgement would be relevant.

"A combined reading of these provisions of the Act, rules and regulations, clearly shows that the statute has unequivocally provided a right of hearing representation to the consumers, though the manner of exercise of such right is to be regulated by the Commission. This right of the consumers is neither indiscriminate nor unregulated as erroneously held by the High Court. It is true that in Calcutta the respondent company supplies energy to nearly 17 lakhs consumers, but the statute does not give individual rights to every one of these consumers. The same is controlled by the Regulations."

From the above it would be clearly seen that the ERC Act does not give individual rights to every one of the consumers and the same is controlled by Regulations. As such it is not possible to give each and every individual consumer the right of hearing. The right of the consumers to represent has been regulated by the TNERC Conduct of Business Regulations 2002 and this Commission has duly observed the provisions of the said Regulations in regard to the right of the representation by the consumers and there is no legal infirmity in regard to the procedure adopted by this Commission in regard to the general public hearings held by this Commission.

7. Point at issue No. 4 in paragraph 3 above viz. Whether this Commission has got the power to order the merger of the Alternate Two Part Tariff of III B with the LT Tariff III B even though the TNEB has not proposed for such merger in their Tariff Petition 1 of 2002?

(i) Arguments of the Petitioners:

Thiru M. Kamalanathan, Learned Counsel for Petitioners has contended that the TNEB has not ventured to merge or reduce this category of Alternate Two Part Tariff. He also contended that the TNEB has not made any complaint that the Petitioners have exceeded the Maximum Demand of 125 KV at any point of time.

(ii) Arguments of the Respondents:

Thiru Vasudevan, Learned Counsel for the Respondents contended that the re-classification of categories of consumers falls within the domain of this Commission and this Commission has got powers to make such re-classification.

(iii) Findings of this Commission:

It may be pointed out that the power to determine the tariff as conferred upon this Commission under section 22 (i) (a) of the ERC Act includes all incidental matters connected therewith. The merger of Alternate Two Part Tariff is an incidental matter connected with the determination of tariff. As already stated above, one of the objects of the ERC Act as set out in the preamble to the said Act is rationalisation of tariff. It is the Commission which is the sole and exclusive authority for the determination of tariff has got the power to order for the merger of the Alternate Two Part Tariff even though the TNEB has not proposed for it in their Tariff Petition. It would be relevant to point out that under Regulation 16 (1) of the TNERC Conduct of Business Regulations 2002 framed under section 58 of the ERC Act, it is perfectly open to this Commission to initiate any proceeding suo-motu

or on a petition filed by any affected or interested person. The above statutory regulation confers suo-motu power of initiating any proceeding upon this Commission. At page 166 of Tariff Order at para 7.6 already extracted above this Commission has given its reasons for the suo-motu powers of rationalisation of tariff even though the TNEB has not proposed for any such rationalisation of tariff.

In view of the above position, the action of this Commission in having ordered for merger of Alternate Two Part Tariff cannot be assailed by the Petitioners.

8. Point at issue No. 5 in paragraph 3 above viz. Whether this Commission while passing the Tariff Order ought to have consulted an Expert Committee like Rating Committee constituted under the Electricity (Supply) Act 1948?

(i) Arguments of the Petitioners:

The Petitioners in their TRPs have contended that this Commission ought to have consulted an Expert Committee while ordering for the merger of Alternate Two Part Tariff.

(ii) Arguments of the Respondents:

Thiru G. Vasudevan, Learned Counsel for the Respondents contended that the action of this Commission is legally sustainable.

(iii) Findings of this Commission:

As per the decision of the Hon'ble Supreme Court in **WBERC vs. CESC Ltd. (2002 8 /SCC p 715)** this Commission itself is an Expert body. The following portion would be relevant.

"We have perused the above judgements as also the arguments of Learned Counsel and we have no hesitation in holding that the appellate power of the High Court statutorily is not hedged in by any restriction, but in our opinion, the High Court merely because it has unrestricted appellate power, should not interfere with the considered

order of this Commission unless it is satisfied that the order of this Commission is perverse, not based on evidence or on misreading of evidence, keeping in mind the fact that this Commission is an expert body."

The observation of the Hon'ble Supreme Court that "this Commission is an expert body" is quite relevant to the TNERC also. It would be relevant to point out that under the ERC Act, it is not incumbent on the part of this Commission to consult any expert committee. The only obligation cast upon this Commission is that it should constitute an Advisory Committee for assisting it in the discharging of its functions. This Commission has duly constituted the Advisory Committee and also duly consulted the Advisory Committee in regard to the Tariff Petition.

9. Conclusion:

In the above circumstances, this Commission is of the view that all the three TRPs referred to above are devoid of any merits and as such are liable to be dismissed without costs. However, in this connection, it would be relevant to point out that one of the contentions put forth by the Petitioners is that the sanction of Alternate Two Part Tariff is in pursuance of the Terms and Conditions of Supply which are statutory in nature and that the Petitioners have spent lot of money in the conversion of their Tariff into Alternate Two Part Tariff. Even though the statutory power of this Commission to determine the tariff under the ERC Act is not limited or controlled by any agreement entered into by the Petitioners with the TNEB or the Terms and Conditions of electricity supply made under the Electricity (Supply) Act, 1948 and even though the ERC Act under which the Tariff Order is issued overrides the Electricity (Supply) Act, 1948 yet this Commission feels that some leniency

has to be shown to the Petitioners in order to mitigate the hardship expressed by them.

It may be pointed out further that the ERC Act along with Electricity (Supply) Act 1948 and Electricity Act, 1910 have been repealed by the new Electricity Act, 2003 which came into force on 10th June 2003. Even though the Electricity (Supply) Act, 1948 under which the Terms and Conditions of supply of electricity have been made by the TNEB has been repealed by the new Electricity Act, 2003, as per the 1st proviso to section 14 of the new Electricity Act 2003, the provisions of the repealed laws shall continue for a period of one year from the date of commencement of the new Act i.e. upto 10th June 2004, and thereafter the provisions of the new Act shall apply. Under the new Act, it is only this Commission, which has got the power to frame Electricity Supply Code which would replace the Terms and Conditions of electricity supply of TNEB.

Having considered all the facts of the case, the Commission issues the following directions:-

- (i) The service connections of the Petitioners were charged under alternative L.T. Two Part Industrial Tariff, which was equivalent to H.T. I A - Industrial Tariff prior to 16.3.2003. The alternative Two Part Tariff has been merged with L.T. III B Industrial Tariff with effect from 16.3.2003. The service connection of the Petitioners shall be continued to be billed at the tariff applicable to H.T. Industrial Tariff (H.T. Tariff I A) for a further period of nine months from the date hereof.
- (ii) The Petitioners shall apply and get their service connections, converted into H.T. services within the above period to get the benefit under H.T. Tariff I A.

(iii) Thereafter the tariff for the service connections shall be regulated as per the Terms and Conditions / Electricity Supply Code in force.

With the above directions, all the three Tariff Review Petitions are dismissed without costs.

Pronounced in Open Court by this Commission on 25th September 2003

**Sd./.....
(S. THANGARATHNAM)
Member**

**Sd./.....
(A. BALRAJ)
Chairman**

List of Witnesses examined

NIL

List of Documents

NIL

**Sd./.....
(S. THANGARATHNAM)
Member**

**Sd./.....
(A. BALRAJ)
Chairman**

/True Copy/

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