

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:-

Thiru M.Chandrasekar

1.

.... Chairman

and

Thiru K.Venkatasamy

.... Member (Legal)

M.P. 28 of 2021

Thiru B. Balamurali,
No. 98/3B, Puliampatti Road,
Anuparpalayam, Eripatti Road,
Pollachi-642 205

.... Petitioner
(Thiru R.S. Pandiyaraj
Advocate for the Petitioner)

Vs

1. The Superintending Engineer,
TANGEDCO
Udumalpet Electricity Distribution Circle,
Udumalpet.
2. The Asst. Executive Engineer,
Operation and Maintenance, TANGEDCO
Udumalpet Electricity Distribution Circle,
Udumalpet.

.... Respondents
(Thiru M. Gopinathan
Standing Counsel for Respondents)

Date of hearing :

**10-08-2021; 31-08-2021; 14-09-2021;
28-09-2021; 26-10-2021; 16-11-2021;
07-12-2021; 28-12-2021; 19-01-2022;
01-02-2022; 15-02-2022; 01-03-2022;
15-03-2022; 29-03-2022 and 05-04-2022**

Date of order :

05-05-2022

The M.P. No. 28 of 2021 came up for hearing on 05.04.2022. The Commission upon perusing the affidavit filed by the petitioner and the counter affidavit filed by the Respondents and all other connected records and after hearing passes the following:-

ORDER

1. Prayer in M.P. No. 28 of 2021:-

The Petitioner has prayed in this petition to pass an interim direction, directing the 1st and 2nd Respondents to treat the Petitioner's LTSC No. 347003395 under LT Tariff IIIB as per Tariff Order No.1 of 2017 dated 11.07.2017 instead of LT Tariff V pending disposal of the above petition and punish the 1st and 2nd Respondent under Section 142 of the Electricity Act, 2003 for contravening the Tariff Order No.1 of 2017 dated 11.07.2017, Tamil Electricity Supply code 2004 and for non-compliance of the directions issued by the Commission in its order dated 02.03.2021 in M.P.No.4 of 2021.

2. Facts of the case:-

The petitioner is enjoying LT CT supply under the Tariff IIIB. The 2nd Respondent along with his officers came to the Petitioner's premises on 22.10.2020 at 15.40 pm for inspection and alleged that there is theft of electricity. The petitioner is contesting that their industry has already registered under the Udyog Aadhaar Number bearing Aadhaar No.TNO3130018095 and a certificate to the effect has also been obtained from the Ministry of Micro, Small & Medium Enterprises in the name of Petitioner Industry clearly mentioning the major activity as "Manufacturing". The Petitioner has also obtained

certificate dated 13.04.2015 from the Department of Industries and Commerce, Government of Tamil Nadu clearing stating curled coir and bailing of coir fiber as manufacturing activity. Hence, the petitioner prayed to treat his service connection under LT-III B instead of the tariff LT-V as contended by the Respondent.

3. Contentions of the Petitioner:-

3.1. The present petition is filed seeking for a direction under Section (142 of the Electricity Act, 2003 to punish the Respondent TANGEDCO for "contravening the Tariff Order No.1 of 2017 dated 11.07.2017 and non-compliance of the directions issued by the Commission in its order dated 02.03.2021 in M.P.No.4 of 2021 and consequently direct the Respondents to treat the Petitioner's service connection under LTCT IIIB and to refund the amounts illegally collected from the Petitioner. The Petitioner has filed the present petition in order to redress its grievance due to the illegal actions on the part of Respondent TANGEDCO by misinterpreting the Tariff Order No.1 of 2017 dated 11.07.2017 of this Hon'ble Commission and consequently alleging theft of electricity in the Petitioner's service connection, based on such misinterpretations, on the arbitrary assumption that the activity of bailing coir fiber in the Petitioner's industry is not manufacturing but commercial in nature i.e., Packing.

3.2. The Petitioner is the Proprietor of M/s.Dhanu Enterprise sanctioned with low Tension under tariff IIIB bearing LTSC No. 347003395. The service connection is being utilized for Manufacturing of Curled coirs and baling of coir fiber using 250 ton hydraulic baling press machines and other ancillary machineries.

3.3. The Petitioner is involved in the manufacturing of coir fiber bales up to 150 KGS. The Coconut fiber which is collected from the Coconut husk in bundles and shredded using our labours. The Coconut fiber from the coconut husk are manually cleaned by removing all dust, sand, stones and materials like plastic wires, leaves, other foreign particles. Subsequently the coconut fibers are dried in sun light, as per the specification, to maintain moisture below 15%. This process is done by manually by our labourers in our factory.

3.4. Consequently, after quality control the shredded fibers are manually feed into the 250 Ton Hydraulic baling Press machines which are hydraulically operated and it compresses the loose fine coconut fiber into bales of fixed sizes and weights. Normally the coir fiber bales weigh up to 120-150 Kgs as per order and market requirements. The hydraulically pressed fiber bales on machines are again put to quality check using inspection equipments such as moisture, size, weight etc. The pressed coir fiber bales should compactly hold as per specifications and once the bales pass the quality check it is manually tied using PET straps. After release the hydraulic pressured coir fiber bales will taken out and the Coconut fiber bales is ready to sale. In this way, hydraulic pressured coir fiber bales of 120-150 kgs are manufactured in the petitioner industry.

3.5. While the things stood thus, the 2nd Respondent along with his officers came to the Petitioner's premises on 22.10.2020 at 15.40 pm for inspection and alleged that there is theft of electricity. They did not find any artificial or means available either in the meter or any of the cables where found to have been bypassed in the premises. This service

connection has been provided with an electronic meter which cannot be tampered with because in case of such tampering, it records data regarding day of the tamper, time of the tamper, number of tampers, billing data and load survey data. Without analyzing all the above said factors the 2nd Respondent has come to the conclusion that usage of electricity in the Petitioner industry amount to theft of electricity under section 135(e) of the Electricity Act, 2003 on the sole allegation that the activity of manufacturing of coir fiber bales is 'packing' i.e., commercial in nature and the Petitioner should have been charged under LT Tariff V instead of LT Tariff IIIB. It is pertinent to mention here that immediately the Respondent also disconnected the Petitioner's service connection. Such an action of the Respondent is illegal, arbitrary, without application of mind and liable to be set aside.

3.6. The Petitioner tried to explain to the 2nd Respondent that there is no theft activity in the petitioner industry and requested to reconsider that the production of hydraulic pressured coir fiber bales using hydraulic machineries and labourers is manufacturing activity and not commercial in nature. The Petitioner explained that the service connections has been sanctioned to the Petitioner Industry by the Respondent TANGEDCO as early as 2014 under LT Tariff IIIB and the Petitioner has been consuming energy for the same activity from 2014 under LT Tariff IIIB and has been paying electricity charges under LT Tariff IIIB without any default till date. But the 2nd Respondent refused to consider any of the submission of the Petitioner and behaved very high headedly.

3.7. The 2nd Respondent on the same day issued a notice demanding a sum of Rs.96,000/- towards compounding charges and Rs.3,76,169 /- towards extra levy for the alleged offence of theft of electricity. The 2nd Respondent threatened the staffs of Petitioner industry that unless he accepts the compounding amount is payment immediately, a criminal case would be filed against the Petitioner and the petitioner would be arrested immediately. The Petitioner was arm twisted by the Officers of the Respondent who did not even seek any explanation from the Petitioner and apprehending arrest by the Police the Petitioner has deposited the amount on 22.10.2020 along with a letter dated 22.10.2020 stating to have accepted the compounding fees and extra levy. The 2nd Respondent had prepared a "Mahazar" and on perusal it is clear that there are no artificial or other means or any of the cables or by passing of the meter in common service connection. The meter seals are intact and properly working. However, assessment of power theft under Section 135 of the Electricity Act, 2003 has been issued on the allegations that the Petitioner has misused LTSC No.347003395 under LT Tariff IIIB for commercial activity. The Respondent has failed to give any justification on how he presumed that manufacturing of hydraulic pressured coir fiber bales using hydraulic machineries and labourers is considered as commercial packing activity and how the Petitioner industry is not entitled for LT Tariff IIIB applicable for micro small and medium industries such as the Petitioner. Such an action of the Respondent against all cannons of law and against the principles of natural justice.

3.8. After having received the compounding fees and the alleged extra levy, the 2nd Respondent has not issued provisional assessment notice, has not called upon the Petitioner to give explanation/objections within 7 days from the date of the provisional assessment order and has not issued any final assessment till date. Such an action of the Respondent is completely contrary to Regulation 23AA of TNERC's Tamil Nadu Electricity Supply Code, 2004 and hence the Respondents are liable to be punished under Section 142 of the Electricity Act, 2003 on this ground alone for contravening the provisions of TNERC's Tamil Nadu Electricity Supply Code, 2004. While the facts being so, the Respondent is threatening to convert the Petitioner's LTSC No. 347003395 under LT Tariff IIIB to LT Tariff V without prior notice or opportunity to the Petitioner.

3.9. Being aggrieved by the same Petitioner filed a detailed objection dated 27.10.2020 which has not been considered by the Respondents till date.

3.10. The action of the 2 d Respondent is contrary to the Tariff Order No.1 of 2017 'Determination of Tariff for Generation and Distribution' dated 11.08.2017 issued by the Commission. It is submitted that in exercise of the powers conferred by clauses (a), (c),(d) of sub-section (1) of Section 62 and clause (a) of sub-section (1) of Section 86 of the Electricity Act, 2003, (Central Act 36 of 2003) and all other powers hereunto enabling in that behalf and after considering the views of the State Advisory Committee meeting held on July 20, 2017 and after considering suggestions and objections received from the public in writing and during the Public Hearings, as per sub-section (3) of Section 64 of the said Act, the Commission has passed the Tariff Order No.1 of 2017 'Determination of Tariff for Generation and Distribution' dated 11.08.2017. Such order under clause 6.2.9 &

6.2.10 respectively provides for Low Tension Tariff III A(1) & IIIA(2) for micro, medium, cottage and tiny industries with a connected load of upto 12Kw. Clause 6.2.11 provides for Low Tension Tariff III B for micro, medium, cottage and tiny industries with a connected load of above 12Kw. The Petitioner industry fall under Clause 6.2.11 since the same is a micro industry having connected load of above 12 Kw. Further, the only condition prescribed in the Tariff Order No.1 of 2017 under clause 6.2.11.3 for an intending consumer to apply under LT Tariff IIIB is that to have an established industry engaged in the manufacture or production of good shall produce Udyog Aadhar Memorandum from the District Industries Centre. In the present case the Petitioner industry has already registered under the Udyog Aadhaar Number bearing Aadhaar No.TNO3130018095 and a certificate to the effect has also been issued by the Ministry of Micro, Small & Medium Enterprises in the name of Petitioner Industry clearly mentioning the major activity as Manufacturing'. The Petitioner has also obtained certificate dated 13.04.2015 from the Department of Industries and Commerce, Government of Tamil Nadu clearing stating curled coir and bailing of coir fiber as manufacturing activity. Hence the action of the 2nd Respondent stating that coconut fiber baling activity in the Petitioner industry is commercial in nature and same amounts to dishonestly abstracting, consuming and using energy with the intention to defraud the licensee which is arbitrary, illegal and without application of mind and liable to be setaside as contrary to the Tariff Order No.1 of 2017 Determination of Tariff for Generation and Distribution' dated 11.08.2017 issued by TNERC. The said Clause 6.2.11.3 as found in the Tariff Order is reproduced below:

"6.2.11.3 The intending consumers applying for service connection under LT Tariff III B claiming to have established the industries engaged in the manufacture or production of goods shall produce Udyog Aadhar Memorandum from the District Industries Centre."

3.11. However, the intention of TANGEDCO is aimed to deny tariffs LT III-B to the Petitioner on their own assumption without properly analyzing whether any manufacturing activity is carried on or not. Therefore, it involves a serious threat to the petitioner, which is already in the process of manufacturing activity since 2014 and importantly the service connections has been sanctioned to the Petitioner Industry by the Respondent TANGEDCO as early as 2014 under LT Tariff IIIB. The 2nd Respondent has intentionally and deliberately has issued the demand notice on the Petitioner with a mala-fide intentions and ulterior motive.

3.12. It becomes necessary to go for a complete verification, whether the said Petitioner industry, is actually carrying on the manufacturing activity or not. In order to ascertain the same, Section 2 (k) of the Factories Act 1948 needs to be referred, where the term 'manufacturing process' as follows:

"Section 2 (k) "manufacturing process" means any process for

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal,
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or

- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage;

From the above, it can be seen that the activity of Petitioner i.e., collecting coconut fibers from the Coconut husk then shredding with labors, then manually cleaning the fiber by removing all dust, sand, stones and materials like plastic wires, leaves, other foreign particles, then drying it in sun light, as per the specification, to maintain moisture below 15%, then feeding it into the 250 Ton Hydraulic baling Press machines for compressing loose fine coconut fiber into bales of fixed sizes and weights and packing/tying using PET straps is a manufacturing activity. The raw material loose coconut fiber is processed and manufactured as 120-150kg coir fiber bales for sale. It is unfair on the part of the Respondent to presume that the activity of manufacturing coil fiber bales using Hydraulic press machines and labourers is commercial in nature and consequently alleging theft of energy on the Petitioner is illegal, arbitrary and liable to set-aside as per Section 2 (k) of the Factories Act 1948. Even assuming for a moment, without admitting that the Petitioner is involved in packing only, even then such activity comes under definition of 'manufacturing process' as per section 2(k) of the Factories Act 1948.

3.13. The Coir Board is a statutory body established by the Government of India under the Coir Industry Act 1953 (No. 45 of 1953) for the promotion and development of the coil (coconut fibre) industry in India. The board functions under the Ministry of Micro, Small

and Medium Enterprises. The Coir Board has issued the certificate of Registration for Industrial Establishment under Form - IV of the Coir Industry (Registration) rule, 2008 for the Petitioner which valid up to 14.12.2022. It is clear from the above that the Petitioner industry is involved in manufacturing of coir related products i.e., coir fiber bales which is certified by the Coir Board which is a statutory body established by the Government of India under the Coir Industry Act 1953 (No. 45 of 1953). Hence the action of the Respondent in alleging theft of electricity on the Petitioner is liable to be set aside as arbitrary, illegal and without application of made and contrary to the certificate issued by the Coir board.

3.14. The Respondent TANGECO filed a petition before the Commission seeking to clarify as to the applicability of the tariff for certain establishments where there is no manufacturing activity being carried out and charged under HT Tariff IA based on registered factories licenses and under LT Tariff III B without any certificate 2 for manufacturing of goods as required in clause 6.2.11.3 of the Tariff Order dated 11.08.2017. The Commission passed final order dated 02.03.2021 to include the above tariff clarification items in their next tariff petitioner to be filed so as to get the views of the stakeholders and till such time the present tariff order has to be followed. The order the Commission is as follows:-

"4. Findings of the Commission.

4.1. TANGEDCO has filed this petition seeking Tariff clarification in respect of the following establishments where there is no manufacturing activity being carried out and charged under HT Tariff I A based on registered factories licenses and under

L T Tariff III B without any certificate for manufacturing of goods as required in clause 6.2.11.3 of the Tariff order dated 11.8.2017.

a. Packaging units

In all packaging units, such as oil, larger quantity of materials are packed into smaller units and distributed.

b. Tamil Nadu State Transport Corporation repair and Workshop and maintenance

In Tamil Nadu State Transport Corporation workshops, mostly the buses are repaired and maintenance works are being carried out. In some places only tyres are being retreaded and body building works are being carried out.

c. Pumping of oil and Gas Units

Oil and Natural Gas company is using service connection for pumping of Oil and Gas, while transmitting from one place to another.

d. Reverse Osmosis Plants Sea / hard water conversion done by private companies.

e. In Battery charging units, the new empty batteries are being charged after addition of acid.

f. Prawn and shrimp culture

g. Central preparation units of Food /sweets /bakery Food/Sweet/bakery shops are preparing items in one central unit and distributing to various branches and there is no sales counter in the premises and may pass orders as may find deem fit.

4.2. But during the course of the proceedings for admission of the case some of the counsels have argued on behalf of some stakeholders viz., TASMA, TECA, and presented their submissions against the petition filed by the TANGEDCO seeking clarification in Tariff Order dated 11-08-2017.

4.3. TASMA, TECA and S/MA have submitted their objections stating that any clarification is issued on applicability of a particular tariff, to a particular type of industry which may result in higher realization of ARR than the earlier approval; further they expressed their concern on that this will be a violation of Section 62(6)

of the Electricity Act 2003. The above Associations contended that if the Licensee filed this petition to withdraw any list of industries, from HT-1A and LT-IIIB, considering these as non manufacturing unit, then it is to be made available for comments of the public.

4.4. The Commission after careful consideration of the submissions of both the side would like to refer the Commissions views in clause 5.2.2.15 in the Tariff Order in TP No.1 of 2017 dated 11.08.2017 wherein it is mentioned that. “ The clarification to classify any type / group of activities, after 4 years from the issue of the Tariff Order may result in retrospective revision of tariff for that category.

4.5. As the Commission has already directed the TANGEDCO to file the ARR, True up and the Tariff petition, TANGEDCO is directed to include the above tariff clarification items in their tariff petition to be filed so as to get the views of the stakeholders and to decide the matter. Until such time the present Tariff Order has to be followed.

Ordered accordingly.”

3.15. From the above it is clear that the action of the 2nd Respondent in misinterpreting the Tariff Order No.1 of 2017 dated 11.07.2017 of the Commission and consequently alleging theft of electricity in the Petitioner's service connection, based on such misinterpretations, on the arbitrary assumption that the activity of bailing coil fiber in the Petitioner's industry is not manufacturing but commercial in nature i.e., Packing is arbitrary, illegal and liable to be punished under Section 142 of Electricity Act, 2003. Based on the above order the Petitioner approached the 2nd Respondent on several occasions requesting him to drop the alleged theft notice on the Petitioner and consequently refund sum of Rs.96,000/- towards compounding charges and

Rs.3,76,169/- towards extra levy for the alleged offence of theft of electricity. But on the other hand the 2nd Respondent is refusing to give refund of the above amount collected illegally from the Petitioner and threatening to convert the Petitioner's LTSC No. 347003395 under LT Tariff III B to LT Tariff V.

3.16. Being aggrieved by same, the present petition is filed seeking for a direction under Section 142 of the Electricity Act, 2003 to punish the Respondent TANGEDCO for contravening the Tariff Order No.1 of 2017 dated 11.07.2017 and non-compliance of the directions issued by the Commission in its order dated 02.03.2021 in M.P.No.4 of 2021 and consequently direct the Respondents to treat the Petitioner's service connection under LTCT IIIB and to refund the amounts illegally collected from the Petitioner.

4. Contentions of the Respondents:

4.1. The petitioner has filed the above Misc. Petition praying for a direction under Section 142 of the Electricity Act 2003 to punish the Respondent TANGEDCO for contravening the Tariff Order No 1 of 2017 dated 11.08.2017 and non compliance of the directions issued by the Commission in its order dated 02.03.2021 in M. P. No. 4 of 2021 and consequently direct the Respondents to treat the Petitioner's service Connection Under LTCT III B and to refund the amounts illegally collected from the Petitioner.

4.2. As regards to the averments in Paragraphs 2, 3 and 4, they are self-serving

statements of the Petitioner and as such the Petitioner is put to strict proof of the same.

4.3. Before traversing into the averments made in the petition, the facts of the case are submitted hereunder:

The petitioner had applied for electrical supply under LT III B category enclosing the MSME certificate issued by the Government of Tamil Nadu, Department of Industries and Commerce. In column specifying the activity viz., Manufacturing / service, it has been specified as Manufacturing. Also in the certificate issued by the Ministry of Micro, Small & Medium Enterprises (UAM No. TNO3B0018050) under classification Code "activity type" it has been noted as:

(1) "Manufacturing". It has further been detailed the activity as "preparation and spinning of Jute, Mesta and other natural fibers including blended natural fibers, n.e.c. "Blended yarn / fabrics containing more than 50% of one fiber". (2) Manufacture of other textiles / textile products.

4.4. Having found that the activities notified in the certificates indicate purely of industrial purposes, as per schedule contained in the Tariff orders issued from time to time, the supply was effected at L. T. Tariff III - B for the sanctioned load of 23.692 KW. Service connection No. 347-003-395 has also been allotted.

4.5. On 22.10.2020 the premise of the service connection was inspected by the Enforcement wing, Coimbatore along with the 2nd respondent herein. The inspection was conducted duly observing the procedure as laid down in Supply code. During

the inspection it has been found that:

- a. there is no shredding of husk
- b. raw coconut fiber already shredded in some other places was stored in the premises.
- c. these raw fiber has been manually put into baling units and the bales sent for sale.

4.6. other textiles / textile products; relying on Having found that the activities undertaken did not establish "manufacturing" as specified in the MSME certificate and also there is NO "Manufacturing" activity of "preparation and spinning of Jute, Mesta and other natural fibers including blended natural fibers, i.e., Blended yarn / fabrics containing more than 50% of one fiber and No manufacture of

Section 135(1)(e) of the Act, the energy charges "for use of electricity for the purpose other than for which the usage of electricity was authorized" were assessed and demand issued by notice dated 22.10.2020.

4.7. The inspection wing has found that basically there were no industrial activities. The statements made by the petitioner in paragraph 3 and 4 of the petition that "the coconut fiber collected in bundles are shredded using labour is not correct. There was no shredding of the husk in the premises. Except for baling there was no industrial activity undergone in the premises. There was predominately manual power employed and baling of the husk alone going on in the premises of the service connection.

4.8. After coming into force of the Electricity Act 2003, the Tariff Notifications are issued by Regulatory Commission. The TANGEDCO being the Licensee to supply

electricity in the state of Tamil Nadu is bound to adhere and implement the tariff notifications. The tariff is determined from time to time by the Commission after considering the views of the State Advisory Committee, the suggestions and objections received from the public in writing and during the public hearings conducted at various places in the State of Tamil Nadu. The Commission issued a Tariff Order T.P. No.1 of 2017 dated 11-08-2017.

4.9.. The petitioner submits that in Tariff Order No. 1 of 2017 dated 11.08.2017, Low Tension Tariff 111-B has been categorized as hereunder: (Schedule 6.2.11)

6.2.11.1 This tariff is applicable to all industries not covered under LT Tariff IIIA(1) and III-A (2). All industries covered under LT III A(1) and III A(2) shall also falls under this tariff category, if the connected load of such services exceed 12

6.2.11.3: The intending consumers applying for service connection under LT Tariff III B claiming to have established the industries engaged in the manufacture or production of Goods shall produce Udyog Aadhar Memorandum from the District Industries Centre

Low tension Tariff V has been categorized in clause 6.2.13 as hereunder:

This tariff is applicable to consumers not categorized under L T IA, 1B, IC, hA, IIB(1), II B (2), IIC, IIIA (I), III A (2), IIIB, IV and VI.....

4.10. As could be noted from the above, this Respondent submits that the industries engaged in the manufacture or production of goods and to that effect produce certificate from Udyog Aadhar Memorandum. It is also respectfully submitted that as could be seen from Tariff schedule 6.2.11 there is no categorization of "packing" activity as industries. In view of the nomenclature notified in the Tariff notification, the packing units are not

specified under LT Tariff IA, TB, IC, hA, IIB(1), II B (2), TIC, IIA (I), III A (2), III B, IV and VI in the Tariff Order issued by the Commission and therefore the applicable tariff for Packing units in respect of LT services is Tariff V.

4.11 As for the Petitioner's LT SC No.347-003-395, having connected load of 23.692 KW the certificates issued by Department of Industries and Commerce, Tamil Nadu and MSME Udyog Aadhaar mentioning the activity as "Manufacture". On inspection it has also been found that there is no manufacturing activity or production of goods and the premises is utilized for packing of the coconut husk collected from other places and baling them into packages intended for sale. Therefore it is submitted that it has to be categorized under miscellaneous tariff category.

4.12. The petitioner having availed the electrical supply for industrial purpose claiming "manufacturing" there was no manufacturing activity at the time of inspection. The coconut husk which had already been shredded elsewhere gathered and baled into bundles intended for sale. The above activity basically does not contemplate industrial. Thus electricity which has been authorized for utilization for industrial purposes has been utilized for purpose other than for which it has been authorized.

4.13. The above unauthorized usage has been noticed by the enforcement wing and also the inspection and findings witnessed by the petitioner. The above act constitute theft of electricity under Section 135 (1) (e) of the Act. Therefore the quantum of the energy was provisionally assessed as per Regulation 23 (AA) of the Supply Code and served on the Petitioner on the same day of the inspection. i.e. 20.10.2020.

4.14. The detailed objection said to have been filed has not been received by these respondents as on this date. Though the letter has been addressed to the Executive Engineer, Pollachi, as could be seen from the acknowledgement, it is seen that the same has been sent to Negamam Division.

415. The petitioner has produced Udyog Aadhar Memorandum as "Manufacturing" under of preparation and spinning of Jute, Mesta and other natural fibers including blended natural fibers, i.e., Blended yarn / fabrics containing more than 50% of one fiber and No Manufacture of other textiles / textile products. The acknowledgement of Udyog Aadhar Memorandum is generated based on the data entered by the applicant at the time of registration for Industry certificate, for the purpose of availing mere tariff concession without changing the activities in the premises and by changing the category in the certificate only. As for the categorization of the tariff, the activities only the criteria and issue of certificate cannot substantiate the actual activities undergone in the premises of the service connection. Further the TANGEDCO is vested with powers to inspect the premises of the service connections and on finding the actual activities undertaken within the premises, bound to adopt appropriate tariff based on the activities. As such, on having found that the activities in the premises of the above service connection is not in commensurate with the spirit of the categorization under Low tension Tariff III B and the energy was utilized for purpose other than which it has been authorized, action was proceeded under Section 135 (1) (e) of the Act and the extra charges on energy collected.

4.16. The Packing units are not categorized under LT Tariff III — B of the Tariff Order No. 1

of 2017 dated 11.08.2017. The electricity authorized for Industrial purpose was utilized for packing. Hence in accordance with Section 135 (1) (e) of the Act action was taken the energy charges demanded. Therefore there is no contravention of the Tariff orders.

4.17. As regards to the contention of the petitioner that the Respondents are not complied with the directions issued by the Commission in its order dated 02.03.2021 in M.P.No.4 of 2021, it may please be appreciated that the inspection was made on 20.10.2020 and demand issued well before the issue of the directions. The occurrence is before issue of the above directions and as such contending that the directions are not complied with, is incorrect. Even in the order it has been directed that:

“The Commission is of the view... in case TANGEDCO identifies the need for specifically excluding any other activity, then TANGEDCO should submit the necessary proposal for the same, along with necessary justification in its next tariff petition”. Thus, it is only the direction to file clarification petition by the TANGEDCO and there is no order to classify packing unit under LT III-B Tariff.

4.18. The real intention behind the above submissions before this Commission is that the true set of facts and the developments took place have to be brought to the knowledge of this Commission. As could be kindly appreciated from the above that the respondents have followed the tariff schedule and also taken action Under Section 135 (1) (e) of the Act read with Regulation 23 (A) of the Supply code. As such it is submitted that there is no cause of action as pleaded for by the petitioner to invoke Section 142 of the Act.

4.19. The Respondents at no point of time intended to contravene or disobey the orders of this Commission. It is therefore humbly submitted that this Counter affidavit may be

accepted and the Commission may pass orders as may find deem fit and thus render justice.

5. Findings of the Commission:-

5.1. Thiru. B. BALAMURALI, The Proprietor of M/s. Dhanu Enterprises of Pollachi represented his case through his counsel and prayed to direct the first respondent viz, the Superintending Engineer, Udumaplet EDC and the second respondent, The Asst. Executive Engineer / O&M / Pollachi to treat his service connection under LT III B. The petitioner prayed to pass an interim direction to treat the Petitioner's LT SC No. 347003395 under LT Tariff IIIB as per Tariff Order No.1 of 2017 dated 11.08.2017 instead of LT Tariff V pending disposal of the petition and also prayed to punish the 1st and 2nd Respondent under Section 142 of the Electricity Act, 2003 for contravening the Tariff Order No.1 of 2017 dated 11.08.2017, Tamil Electricity Supply code 2004 and for non-compliance of the directions issued by the Commission in its order dated 02.03.2021 in M.P.No.4 of 2021.

5.2. The petitioner has stated that the power supply drawn from the TANGEDCO is being used for manufacturing of Curled coirs and of coir fibre using 250 ton hydraulic baling press machines and other ancillary machineries. Their manufacturing process includes collection of Coconut husk in bundles and shredded using the labour. The coconut fibre separated from the coconut husk are manually cleaned by removing all dust, sand, stones and materials like plastic wires, leaves, other particles. Subsequently the coconut fibres are dried, to maintain moisture below 15%. After

quality control the shredded fibres are manually feed into the 250 Ton Hydraulic baling press machines which compresses the loose fine coconut fibre into bales of fixed sizes and weights.

5.3. Initially, the petitioner obtained certificate from District Industries Centre for Entrepreneur memorandum number - Acknowledgement Part-II under “Manufacturing” for “Curled Coir and Baling of coir fibre” on 13.4.2015; and then Udyog Aadhaar Registration Certificate issued vide No.TN03B0018050 for manufacturing under Code 13119 – “Preparation and spinning of jute, mesta and other natural fibers including blended natural fibers n.e.c. *Blended yar / fabrics means, yarn / fabrics containing more than 50% of one fiber” and Code 13999 – “Manufacture of other textiles / textile products n.e.c.” on 3.7.2019. Further, stated that Coconut fibre is collected from Coconut husk in bundles and shredded by their labours and after cleaning process the shredded fibres are compressed as fibre bales.

5.4. The “Coir industry” is listed as Manufacturing activity under the first schedule to the Industries (Development and regulation) Act 1951. In fact, the coir manufacturing process consists of many stages of process like Husking, Retting, Extracting, Defibering, Drying, Hacking, Bundling, spinning, packing, etc., In the Petitioner’s case, their process includes collection of Coconut husk in bundles and shredded using the labour. The coconut fibre separated from the coconut husk are manually cleaned by removing all dust, sand, stones and materials like plastic wires, leaves, other particles.

Subsequently, the coconut fibres are dried, to maintain moisture below 15% and then the shredded fibres are manually fed into the 250 Ton Hydraulic baling press machines.

5.5. The Respondent has contended that no manufacturing activity or production of goods in the premises of the petitioner and only packing of Coconut husk and baling them into packages are carried out. Hence the activity was considered as misuse of Tariff under section 135(1)(e) of the Electricity Act, 2003.

5.6. But, we cannot set aside the documents and evidences produced by the Petitioner claiming for having manufacturing process in its premises as defined under the Industries (Development and Regulation) Act, 1951 and the Factories Act 1948. Moreover, the Respondent has not produced any evidence or document to establish their side to prove that there was only packing activity. It is the onus of the Respondent that to substantiate the fault in activity / misuse in consumption of electricity by the consumer in violation of the Electricity Act, 2003 or any other Order/Regulation of the Commission, or otherwise the Respondent will lose its side of argument. The statement of the Distribution Licensee must be unambiguous and confident, so that the consumer may not be unnecessarily punished by 'Disconnection of service' or subjected to face any legal consequences.

5.7. Moreover, the reference of the Commission's Order in M.P.4 of 2021 dated 02.03.2021 also to be taken into account, which reads as below –

"4. Findings of the Commission.

4.1. TANGEDCO has filed this petition seeking Tariff clarification in respect of the following establishments where there is no manufacturing activity being carried out and charged under HT Tariff I A based on registered factories licenses and under L T Tariff III B without any certificate for manufacturing of goods as required in clause 6.2.11.3 of the Tariff order dated 11.8.2017.

a. Packaging units

In all packaging units, such as oil, larger quantity of materials are packed into smaller units and distributed.

b. Tamil Nadu State Transport Corporation repair and Workshop and maintenance

In Tamil Nadu State Transport Corporation workshops, mostly the buses are repaired and maintenance works are being carried out. In some places only tyres are being retreaded and body building works are being carried out.

c. Pumping of oil and Gas Units

Oil Nature Gas company is using service connection for pumping of Oil and Gas, while transmitting from one place to another.

xxxx

xxxx

xxxx

4.4. The Commission after careful consideration of the submissions of both the side would like to refer the Commission's views in clause 5.2.2.15 in the Tariff Order in TP no 1 of 2017 dt 11.8.2017 wherein it is mentioned that, "The commission is of the viewIn case TANGEDCO identifies the need for specifically excluding any other activity, then TANGEDCO should submit the necessary proposal for the same, along with necessary justification in its next tariff Petition". Any mid-course clarification to classify any type/group of activities, after 4 years from the issue of the Tariff Order may result in retrospective revision of tariff for that category.

4.5. As the Commission has already directed the TANGEDCO to file the ARR, True up and the Tariff petition, TANGEDCO is directed to include the above tariff

clarification items in their tariff petition to be filed so as to get the views of the stakeholders and to decide the matter. Until such time the present Tariff Order has to be followed..”

As above, the Commission was not inclined for any reclassification / clarification in respect of the above categories from the existing one, as per the Order of the Commission in T.P.1 of 2017 dated 11.08.2017. Moreover the TANGEDCO was directed to file a comprehensive Tariff petition incorporating all its clarification for deciding the matter in ensuring tariff order after getting the comments of the stakeholders.

5.8. Having any doubt in its mind on applicability of tariff, the respondent cannot punish any consumer to the extreme level of disconnection of supply / compounding under Section 135 of the Electricity Act, 2003. Thus no clarification issued by the Commission as above, the applicability of the order in M.P.4 of 2021 cannot be interpreted as *ex post facto* or *ex ante*. The petitioner has clearly shown its activities carried out in its premises with the pictorial evidences (photos), whereas the respondent failed to do so. From these evidences, we have our opinion that the activities can be said to be as per the major activity defined under the EM / Udyog Aadhaar Registration certificate. In view of this the change of tariff to LT-V will not arise in the case of the petitioner.

5.9. In this circumstances, the action of the Respondent for charging of the petitioner under LT-V instead of LT-IIIB is no way warrants under Section 135 of the Electricity

Act 2003. If there any misuse of tariff be so, the Respondent could have issued a notice in this regard when they are not clear in the correct applicability of tariff. Moreover such action is not appreciated in the consumer oriented organization like TANGEDCO.

5.10. Though the issue is settled with the above decision of applicability of tariff, the Commission intends to set right the growing misinterpretation of provisions under section 126 and 135 of the Electricity Act, as may be seen in this case.

5.11. Though the unauthorized use other than the theft of electricity falls within in the scope of section 126, it is often dealt under section 135 which is exclusively meant for theft of electricity.

5.12. The provisions of Section 126 of the 2003 Act are self explanatory. They are intended to cover situations other than the situations specifically covered under Section 135 of the 2003 Act. Neither Section 126 nor Section 135 should be read in isolation. Each section should be read with the provisions of the other besides the regulations in force and they should be so interpreted as to achieve the aim of workability of the enactment comprehensively, while giving them a purposive interpretation in preference to textual interpretation.

5.13. The clarification regarding the applicability of the provisions under Section 126 and 135 of the Electricity Act, 2003, was issued from ministry of Power / Government of India way back in 2007 as reproduced below:

"No. 42/2/2005-R&R

Government of India

Ministry of Power

Shram Shakti Bhawan, Rafi Marg,

New Delhi, the 12th November, 2007

To

The Pr. Secretary/Secretary (Energy) of all the States

The Secretary of all SERCs

Subject: Applicability of provisions of Section 126 and 135 of the Electricity Act 2003

Sir,

Subsequent to the enactment to the Electricity (Amendment) Act,2007, references have been received from the M.P. Electricity Regulatory Commission and the UP Electricity Regulatory Commission seeking clarification regarding applicability of the provisions of Section 126 and 135of the Electricity Act. The matter has been examined in consultation with the Deptt. of Legal Affairs and accordingly following is clarified:

(i) Key difference between the two provisions of sections 126 and135 is that 'dishonest intention' as mentioned u/s 135 is the necessary ingredient for the offence of theft of electricity.

(ii) For prosecuting someone u/s 135, a complaint or a report by police to the court is necessary u/s 151.

(iii) Section 126 is for assessment of the charges for unauthorized use of electricity. This provision would also be applicable to those cases where action is taken for offences under section 135and the situation of alleged commitment of offence is covered under the provisions of Section 126."

5.14. In regard to the interpretation of 'Dishonest intension' mentioned in the above clarification, it is pertinent to refer the order the Bench of the Hon'ble Supreme Court of India, dated 20.10.2011 in the case of Executive Engineer & Another Vs M/s. Sri Seetaram Rice Mill {Civil Appeal No.8859 of 2011 reported in (2012) 2 SCC 108}, from which the relevant portions are extracted as below:

"1(b) Distinction between Sections 126 and 135 of the 2003 Act

15. Upon their plain reading, the mark differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. Section 135 of the 2003 Act falls under Part XIV relating to 'offences and penalties' and title of the Section is 'theft of electricity'. The Section opens with the words 'whoever, dishonestly' does any or all of the acts specified under clauses (a) to (e) of Sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Sub-section (1A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under Sub-sections (2) to (4) of the said Section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to mal practices which may squarely fall within the expression 'unauthorized use of electricity'. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'authorized use of electricity'. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of - Section 126(2) of the 2003 Act. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount

with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of Sub-sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

16. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of Criminal Jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intent and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

17. Thus, it would be clear that the expression 'unauthorized use of electricity' under Section 126 of the 2003 Act deals with cases of unauthorized use, even in absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorization, like providing for a direct connection bypassing the installed meter. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

18. Section 135 of the 2003 Act significantly uses the words 'whoever, dishonestly' does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. 'Dishonesty' is a state of mind which has to be shown to exist before a person can be punished under the provisions of that Section."

5.15. The combined reading of the above crucial references make it clear that there should be a dishonest intension on the part of the consumer to steal electricity as the necessary ingredient to decide the offence of theft of energy to deal with under section 135.

5.16. The dishonest intension can be inferred from the act of abstracting the energy in an unlawful ways like tapping the electricity from overhead line or underground or facilities of distribution system, tampering / meddling/damaging / destroying the meter, usage of any foreign material to meddle the recording of energy in the meter or any other ways and means by which meter recording is impeded or stopped either intermittently or permanently.

5.17. In all these cases, the energy is prevented from being recorded in the meter either partially or fully, lending the direct meaning to the expression , 'theft of energy', to be dealt under section 135. When energy is fully recorded in the meter and such energy so recorded is used for the purpose other than the purpose authorized, there cannot be dishonest intension to steal the energy simply because the energy is fully recorded and metered. Such cases categorically fall under section 126 and to be dealt accordingly.

5.18. Through the expression '*use of electricity for the purpose other than electricity for the purpose other than for which the usage of electricity was authorized*' appears both under section 126 and 135 there exists no commonality between them in terms nature of unauthorized use meant by each section. A careful conjoint reading of section 135 and Explanation to section 126 would show that some of the unauthorized usage of electricity (with a dishonest intension to steal electricity with partial or no recording of energy in the meter as explained above) also amount to theft of electricity, because the theft itself amounts to unauthorized electricity. But all other unauthorized usage of electricity (without a dishonest intension to steal electricity, with the consumed energy fully recorded in the meter) fall only under section 126 and cannot constitute the meaning of theft to fall under section 135.

5.19. This commission has rendered several judgments on similar issue viz., Suo-motu proceedings No.3 of 2012 dated 11.7.2013, SMP No.4 of 2013 dated 6.8.2019 and SMP No.4 of 2014 dated 19.1.2015 and given its findings. These may also be complied with, without any deviations.

5.20. Summarization of entire discussion culminates that the clinching factor that separates the section 126 and 135 with clear demarcation is the consideration of whether energy consumed is fully recorded in the meter or not. Once the consumed energy is fully recorded in the meter, there can be no inference of theft of electricity to its meaning and Section 135 has no role to play therein.

5.21. As there is no misuse of tariff, the amount collected towards Compounding charges and the Extra levy charges to be refunded to the petitioner within 30 days time along with 12% interest.

5.22. The respondent Licensee is directed to communicate this order with due instructions to all levels of the officers and staff concerned (including Anti-Power Theft squad & other squad) for strict adherence. And in future, if any such complaint/petition received, the Commission will not hesitate to initiate action under section 142 of the Electricity Act 2003.

Ordered accordingly.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission