

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 08th Day of August 2024

PRESENT:

ThiruM.Chandrasekar Chairman
ThiruK.Venkatesan Member
and
ThiruB.Mohan Member (Legal)

R.P. No. 1 of 2023
in
M.P.No.2 of 2019

M/s.Best Cotton Mills HTSC No.129 & 271,
(Unit of Best Corporation Limited),
Pollachi Road, Dharapuram – 638 673,
By its Manager P.Muthukrishnan

... Review Petitioner/
11th Respondent
Adv. R.S.Pandiyaraj

Versus

1. Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai – 600 002
Rep. by its Chief Financial Controller/Revenue & others
2. M/s. Asahi India Glass Ltd.
Plot No.F-76 to F-81,
SIPCOT Industrial Park Sriperumbdur,
Kancheepuram District,
Tamil Nadu, PIN-602 105.
3. M/s. Technical Stamp Lings Automotive Ltd.
Plot No.G 16-18,
SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur,
Kancheepuram District.

4. M/s. National Textile Corporation Ltd,
Scope Complex, Core IV,
7, Lodhi Road,
New Delhi-110 003.
5. M/s.CAMBODIA Mills,
A unit of National Textile Corpn Ltd,
Trichy Road, Ondipudur,
Coimbatore-641 016.
6. M/s. Pankaja Mills,
A Unit of National TextileCorp n Ltd,
Pankaja Mills Road,
Ramanathapuram,
Coimbatore -641 045.
7. M/s. Sri Ranga Vilas SPG & WVG Mills,
A Unit of National Textile Corp n Ltd.
Avinashi Road, Peelamedu,
Coimbatore-641 004.
8. M/s. Kaleeswara Mills
“B”Unit, HTSC No.15,
Kalayarkoil,
Sivagangai - 630 551
9. M/s. Pioneer Spinners,
HTSC No.5,
Paramakudi, 1,
Ramanathapuram-623 719
10. M/s.TMTMuthammal Textile Mills Pvt. Ltd.
Boothakudi Village,
Erasanayakanpatti Post
Viralimalai, Puddokottai-621 316

11. M/s. The Southern India Mills Association,
No.41, Race Course Road,
Coimbatore-641 018.
12. M/s. Spictex Cotton Mills,
HT SC. No. 221,
63-B.P.N. Road,
Thiruppur -641602,
Rep.by its Manager S.P. Satheesh Kumar
13. M/s. Super Sales India Ltd., HT SC. No. 155,
Ayyampalayam, JaminMuthur (PO), Pollachi,
Coimbatore,
Rep. by its General Manager Finance S.Ravindran
14. M/s. Aswin Textiles (P) Ltd., HTSC No. 200,
Therpattipirivu, Palani Road,
Dharapuram-638 673,
Rep.by its ManagerK. Periyasamy
15. M/s. Bannari Amman Spinning Mills Ltd.,
HT SC No. 171, Unit-1, HT SC No. 171,
Vadamadurai, VendasandurTaluk,
Rep.by its General Manager-K. Prabakaran
16. M/s. Bannari Amman Spinning Mills Ltd.,
HT SC No. 279, Morepatty Post,
Velvarkottai,
Vadamadurai.
17. M/s.Rajapalayam Mills Limited,
Rep. by its General Manager- Electrical
Mr.B.Velvendan, Post Box No.01
P.A.C Ramasamy Raja Salai
Rajapalayam – 626117
Virudhunagar District.

18. M/s. Tamil Nadu Spinning Mills Association,
No.2, Karur Road,
Modern Nagar,
Dindigul – 624001.
Rep by its Chief Advisor,
Dr.K.Venkatachalam.
19. M/s. Indoshell Mould Limited,
A-9, SIDCO Industrial Estate,
Coimbatore -641021.
20. M/s. TATA Consultancy Services,
Siruseri SEZ Unit, Plot.No.1/G1
Sipcot IT Park SiruseriNavalur Post,
Kanchipuram District,
Chennai-103.
21. M/s. Madras Cements Ltd,
Across Corporate Centre,
No.98, Dr.RadhakrishnanSalai,
Mylapore,
Chennai- 600 004.

..... Respondents
Adv.Richardson Wilson

The Review Petition preferred by the petitioner M/s. Best Cotton Mills coming up for final hearing on 18.07.2024 in the presence of Thiru.S.P.Parthasarathy, Advocate for the Petitioner and Thiru.Richardson Wilson, Advocate for TANGEDCO and on consideration of the submission made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

ORDER

1. The Review Petitioner, who stood arrayed as the 11th respondent in the petition M.P. No. 2 of 2019 preferred by the 1st respondent TANGEDCO, has preferred the instant Review Petition in regard to a portion of the order dated 20.07.2023 passed by this Commission in the said petition contending inter alia that there is an error apparent on the face of record.

2. The case of the Review Petitioner in a nutshell:-

The 1st respondent TANGEDCO preferred the petition M.P.No.2 of 2019 with a prayer to clarify the method of calculation of excess demand and excess energy consumed by a HT consumer who partially uses TANGEDCO power by way of adjusting captive / third party power and the date from which the order of the State Commission dated 07.09.2010 passed in M.P.No.9 of 2020; M.P.No.6 of 2010; M.P. No. 17 of 2010 and D.R.P. No. 9 of 2010 is required to be implemented both for captive and third party users in connection with the calculation of excess demand and excess energy charges. On culmination of enquiry, the Hon'ble Commission passed a detailed order dated 20.07.2023 in the said petition. The Review Petitioner submit that paragraph 8.15 (II) (vii) and (viii) of the order palpably has come to be passed by the Commission in ignorance of the intention and true purport of the judgment dated 12.12.2012 rendered by the Hon'ble APTEL in Appeal No. 51 and 56 of 2012 and the consequential implementation order passed by this Commission dated

29.01.2013 in R.A. No. 2 of 2013 and as such the same tantamount to error apparent on the face of record. Further para 8.16 of the impugned order has come to be passed ignoring the vital findings of the Hon'ble APTEL rendered in Appeal No.177 of 2013 vide order dated 29.05.2014 and the order dated 25.10.2018 passed by the Hon'ble Supreme Court in C.A. No.8218 of 2015 and as such falls within the contour of the power of review conferred upon the Commission under the Electricity Act and TNERC (Conduct of Business) Regulations 2004. Contending so, the Review Petitioner seeks to review the relevant paras, modify the same and prevent miscarriage of justice.

3. **The substratum of the objections raised by the 1st respondent /**

TANGEDCO:-

The impugned order dated 20.07.2023 passed by the Hon'ble Commission in M.P. No.2 of 2019 was passed conscious of the import of the order dated 12.12.2012 passed by the Hon'ble APTEL in Appeal No.51 and 56 of 2012 and order dated 29.05.2014 passed by the Hon'ble Supreme Court in C.A. No.177 of 2013 and as such absolutely there is no legal ground to contend that there is an error apparent on the face of record in the said order. The present Review Petition is nothing but an appeal in disguise and as such is not maintainable under law. In total, the 1st respondent TANGEDCO prayed for the dismissal of the Review Petition.

4. Arguments advanced on either side heard Impugned order traversed. Relevant provisions of the code of civil of procedure, Electricity Act 2003 and TNERC (Conduct of Business) Regulations 2004 considered.
5. The points for determination that arise in the present review petition are as follows:-
 - 1) Whether there exists an error apparent on the face of record in regard to paragraph 8.15 (II) (vii) and (viii) and 8.16 of the order dated 20.07.2023 passed by this Commission in M.P. No.2 of 2019 as contended by the Review Petitioner?
 - 2) Whether exercise of jurisdiction conferred upon this Commission u/s 94(f) of the Electricity Act 2003 read with Regulation 43(1) of TNERC (Conduct of Business) Regulations 2004 is warranted in the present case?
 - 3) To what extent the order dated 20.07.2023 require modification?

6. **Findings on point No. 1:-**

6.1) M.P.No.2 of 2019 was initially filed by the Chief Financial Controller/TANGEDCO, who is arrayed as Respondent No.1 in the present review petition, before this Commission with a prayer to clarify the method of levying excess demand and energy charges on HT consumers who partially use TANGEDCO's power by way of adjusting captive/third-party power and the date from which the order of this Commission dated 07.09.2010 in M.P.No.9 of 2010, M.P.No.6 of 2010, M.P.No.17 of 2010 and D.R.P.No.9 of 2010 is required to be implemented for both captive

and third party users in connection with excess calculation of excess demand and energy charges. This Commission passed a detailed order dated 20.07.2023 in M.P.No.2 of 2019, wherein the whole R&C period was categorised into three parts in the matter of calculation of excess demand and energy charges as follows:

- a) First Part from the month of 12/2008 to 10/2009
- b) Second Part from the month of 11/2009 to 08/2010
- c) Third part from the month of 09/2010 onwards

6.2) It is pertinent to mention here that both Paragraph 8.15 (II)(vii)&(viii) and Paragraph 8.16 of the order dated 20.07.2023, which is sought to be reviewed in the present petition, falls squarely within the second part from the months of 11/2009 to 08/2010, i.e., when the advance declaration of energy by captive consumers was in vogue, and when demand and energy quota were issued to captive users, based on such declaration as per the order passed by this Commission in S.M.P.No.1 of 2009 dated 28.10.2009. Hence, the Commission will deal only with the second part, i.e., from the months 11/2009 to 08/2010 of the order dated 20.07.2023 in this review petition.

6.3) Paragraph 8.15 (II)(vii)&(viii) of the order in M.P.No.2 of 2019 dated 20.07.2023 is reproduced below:-

“8.15.II. Second part from the month of 11/2009 to 08/2010:

(vii). The monthly equivalent demand for the adjusted units (including units drawn from banking) by the captive /third party open access consumer should be

subtracted from the highest recorded demand in respective month. Balance would be the demand actually supplied by TANGEDCO. If this figure exceeds the demand quota fixed for TANGEDCO's power, the consumer would be liable to pay excess demand charges.

(viii). Similarly, the energy adjusted by the captive/third party open access would be subtracted from the total energy consumed by the open access HT consumer in a respective month from TANGEDCO. Balance would be the energy actually supplied by the TANGEDCO. If this figure exceeds energy quota fixed in respective month for the TANGEDCO's power, the consumer would be liable to pay excess energy charges."

6.4) In Para 8.15.II (vii)& (viii) of the order dated 20.07.2023, for the second part, from the months from 11/2009 to 08/2010, this Commission has clarified that for the purpose of arriving at the excess demand & energy consumption by captive/third-party open-access consumers, monthly equivalent demand should be arrived based on the **adjusted units** at the end of the month and subtracted from the highest recorded demand& total energy consumption respectively in that month. If this figure exceeds the demand & energy quota respectively fixed for TANGEDCO's power, the consumer would be liable to pay excess demand and energy charges.

6.5) The primary contention of the Review Petitioner is that the Hon'ble APTEL, in its Judgment dated 12.12.2012 in Appeal No.51 & 56 of 2012 dated 12.12.2012,has categorically held that only from 01.10.2010, the method of

calculating the equivalent demand based on the energy actually adjusted/consumed will take effect. The Review Petitioner also relies on the consequential implementation order passed by this Commission in R.A.No.2 of 2013 dated 29.01.2013, which unambiguously declared that TANGEDCO can resort to the calculation of demand and energy quota based on the actual energy adjusted/consumed by the captive users, at the end of the month with effect from 01.10.2010 and not before that date. Therefore, the Review Petitioner contends that the clarification issued by this Commission in Para 8.15 (II)(vii)&(viii) of the order dated 20.07.2023, allowing the TANGECO to calculate excess demand and energy charges based on the adjusted units for the second part of months from 11/2009 to 08/2010, i.e., prior to 01.10.2010, is an error apparent on the face of the record. The Review Petitioner claims that such clarification in the impugned Para 8.15.II (vii)& (viii) of the order dated 20.07.2023 disregards and ignores the judgment of the Hon'ble APTEL in Appeal No.51 & 56 of 2012 dated 12.12.2012 and also the subsequent implementation order by this Commission in R.A.No.2 of 2013 dated 29.01.2013. Contending so, the review petitioner calls for a review of the same.

- a) The Commission is obliged to analyse the judgment rendered by the Hon'ble APTEL in Appeal No. 51 & 56 of 2012 dated 12.12.2012 and the consequential implementation order passed by this Commission in R.A.No.2 of 2013 dated 29.01.2013 to decide the sustainability of the Review Petitioners contention.

b) Operative Portion of the summary of the findings of the Hon'ble APTEL in Appeal No.51 & 56 dated 12.12.2012 is as hereunder:-

“39. Summary of findings:

i) On going through the State Commission's order dated 28.11.2008, State Electricity Board's memo dated 17.11.2008 and wind energy tariff order dated 20.3.2009, we hold that the equivalent demand has to be based on the energy from wind energy generators actually consumed by the captive user or energy adjusted in a month.

ii) However, the memo dated 17.11.2008 was modified by the State Commission order dated 28.10.2009 to the extent that the demand and energy quota was fixed on the basis of advance declaration of captive energy by the consumer. This created an ambiguous situation. Once the quota has been fixed by the Electricity Board on the basis of the advance declaration and communicated to the consumer and the consumer abided by it, the same can not be changed subsequently.

iii) However, once the system of advance declaration was dispensed with by the order dated 7.9.2010, the memo dated

17.11.2008 in original form as interpreted in this judgment as read with the order dated 7.9.2010 shall take effect.

iv) Thus, it has to be held that the State Commission was not correct in holding that the clarification will take effect from 25.6.2010 because the procedure of advance declaration of energy by the consumer and communication of demand and energy quota as per the order dated 28.10.2009 was still in vogue and the same was modified only by the order dated 7.9.2010. Thus till September, 2010, the demand and energy quota as communicated to the consumers by the Electricity Board based on the advance declaration of energy by the consumers will have effect for calculation of excess demand and energy charges. Thereafter, from 1.10.2010, the method of calculating the equivalent demand on the basis of energy from wind energy generator actually consumed or adjusted in consonance with the order dated 7.9.2010 read with memo dated 17.11.2008 shall take effect.

40. In view of the above we allow the Appeals and set aside the impugned order to the extent indicated above. The State Commission is directed to pass the consequential order within 30 days from the date of communication of this judgment. No order as to Costs.

- 6.6) It is pertinent to note that the above Judgment of the Hon'ble APTEL in Appeal No.51 & 56 of 2012 dated 12.12.2012 has not been challenged by any party before the Hon'ble Supreme Court, and hence, it has attained finality and has become binding on all the parties.
- 6.7) Based on directions issued by the Hon'ble APTEL at Para 40 of the judgment dated 12.12.2012, this Commission has passed a consequential implementation order in R.A.No.2 of 2013 dated 29.01.2013, in which this Commission has directed that the TANGEDCO can resort to the calculation of demand and energy quota, based on the actual energy consumed/adjusted by the captive users in the same month with effect from 01.10.2010. The operative portion of the order dated 29.10.2013 in R.A.No.2 of 2013 is reproduced below:

“In the light of the above directions of the Hon'ble APTEL, this Commission passes the following consequential order

(i) TANGEDCO shall resort to calculation of the demand and energy quota based on the wind energy actually consumed by the captive user and adjusted in the same month with effect from 1-10-2010.

(ii) As directed by the APTEL in para 39 (iv), the implementation of this order may be confirmed within a month's time.

(iii) This order shall be posted in the website of the Commission and copies be forwarded to TANGEDCO for compliance and copies may also be sent to other parties to the appeal viz. M/s. Indian Wind Power Association, Chennai and Southern India Mills Association, Coimbatore.”

- 6.8) A thread-bare reading of the judgment dated 12.12.2012 passed by the Hon'ble APTEL in Appeal No.51 and 56 of 2012 disclose that the Hon'ble APTEL has held that the clarification dated 25.06.2010 issued by the 1st Respondent, cannot be applied during the Second Part of the months from 11/2009 to 09/2010 in question because the procedure of advance declaration of energy by the captive consumer and communication of demand and energy quota, as per the order dated 28.10.2009 was then in vogue and the same was modified only by the order dated 07.09.2010. Till September 2010, the demand and energy quota, as communicated to the consumers by the Electricity Board based on the advance declaration of energy by the consumers, will have an effect on the calculation of excess demand and energy charges. Thereafter, from 01.10.2010, the method of calculating the equivalent demand on the basis of energy actually consumed or adjusted from the CPP, in consonance with the order dated 07.09.2010 read with a memo dated 17.11.2008, shall take effect. This Commission has also passed an implementation order dated 29.10.2013 in R.A.No.2 of 2013, directing TANGEDCO to implement the same within one month time.

6.9) Based on the above discussions, this Commission has to necessarily hold that Paragraphs 8.15 (II)(vii)&(viii) of the order dated 20.07.2023 passed by this Commission clarifying that the TANGEDCO can arrive at the excess demand & energy charges on captive consumers, by calculating monthly equivalent demand, based on the energy adjusted/consumed during the second part of the months from 11/2009 to 08/2010 i.e., prior to 01.10.2010, is not only contrary but also non-consideration of the Judgment rendered by the Hon'ble APTEL dated 12.12.2012 in Appeal No.51 & 56 of 2012. As rightly pointed out by the Review Petitioner, the implementation order dated 29.10.2013 in R.A.No.2 of 2013 was completely lost sight of by this Commission while passing the order dated 20.07.2023 in M.P.No.2 of 2019. As the intention and true purport of the judgment rendered by Hon'ble APTEL in the order dated 12.12.2012 and the consequential implementation order dated 29.10.2013 in R.A.No.2 of 2013, is proved to have been lost sight of by the Commission while passing the order dated 20.07.2023 in M.P.No.2 of 2019, the same tantamount to an error apparent on the face of record, as contended by the Review Petitioner. Paragraph 8.16 of the impugned order came to be passed in the light of the order passed in para 8.15 (II) (vii) and (viii). Hence the conclusion that an apparent error on face of record exists in respect of para 8.16 also is inevitable. Hence this Commission decides that there exists an error apparent on the face of record in regard to paragraph 8.15 (II) (vi) and (viii) and 8.16 of the order

dated 20.07.2023 passed by this Commission in M.P. No. 2 of 2019.

Accordingly this point is determined.

7. **Findings on Point No. 2:-**

7.1) The trite law is that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. A review of judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in by judicial fallibility.

7.2) In the present case paragraph 8.15(II) (vii) and (viii) and 8.16 of the impugned order is established to have been passed losing sight of the judgment dated 12.12.2012 passed by APTEL in Appeal No.51 and 56 of 2012 and the subsequent implementation order dated 29.01.2013 passed by this Commission in R.A. No.2 of 2013. The axiomatic principle of law is that the act of court shall prejudice none. By applying the said principle of law to the facts of the present case, this Commission decides that not only for advancement of substantial justice but also to prevent miscarriage of justice, the exercise of jurisdiction conferred upon this Commission by virtue of the provisions of Section 94(f) of the Electricity Act 2003 and Regulation 43(1) of the TNERC (Conduct of Business) Regulations 2004 is warranted in the present case.

Accordingly this point is determined.

8) **Findings on Point No.3:-**

8.1) In the backdrop of the findings rendered by this Commission on Point No.1 and 2, this Commission decides that paragraph 8.15 (II) (vii) and (viii) of the order dated 20.07.2023 passed by this Commission in M.P. No.2 of 2012 has to be modified in consonance with the findings rendered by the Hon'ble APTEL vide order dated 12.12.2012 passed in Appeal No.51 and 56 of 2012. Para 8.16 has to be deleted in view of the findings rendered by APTEL vide order dated 29.05.2014 passed in Appeal No.177 of 2013 and order dated 25.10.2018 passed by the Hon'ble Supreme Court in C.A. No. 8218 of 2015.

Accordingly this point is determined.

9) In the result the Review Petition is allowed. Paragraph 8.15 (II) (vii) and (viii) and 8.16 of the order dated 20.07.2023 passed by this Commission in M.P. No.2 of 2019 is reviewed and modified as hereunder.

(a) "Para 8.15(II)(vii) The clarification dated 25.06.2010 issued by the 1st Respondent CFC/TANGEDCO cannot be applied during the Second Part of the months from 11/2009 to 09/2010 when the procedure of advance declaration of energy by the captive consumer as per the order of this Commission in S.M.P.No.1 of 2009 dated 28.10.2009 was in vogue. As held by the Hon'ble APTEL in the Judgement dated 12.12.2012 in Appeal No.51

& 56 of 2012, till September 2010, the demand and energy quota, as communicated to the consumers by the Electricity Board based on the advance declaration of energy by the consumers, will have the effect for calculation of excess demand and energy charges. Further, with effect from 01.10.2010, TANGEDCO shall resort to levying excess demand and energy quota on captive users based on the energy actually consumed/adjusted in consonance with the memo dated 17.11.2008 and para 4.5 of the Commission order dated 07.09.2010 as held by the Hon'ble APTEL in Appeal No.51 & 56 of 2012 dated 12.12.2012 and the consequential implementation order dated 29.10.2013 in R.A.No.2 of 2013.”

(b) Para 8.15(II)(vii) and (viii) and 8.16 in the original order shall stand deleted.

Parties shall bear their respective cost.

No order as to cost.

(Sd.....)
Member (Legal)

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**