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

PRESENT:-

ThiruM.Chandrasekar .... Chairman

and

ThiruK.Venkatasamy .... Member (Legal)

R.P.No.8 of 2021
in
D.R.P.No.18 of 2013

Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
144, Anna Salai,
Chennai 600 002
Represented by its Chief Financial Controller
Deposits and Documentation …. Petitioner
(Thiru Richardson Wilson, AGP
for TANGEDCO)

-Versus-

M/s.ITC Limited
Having its Registered Office at
"Virginia House"
37, J.L. Nehru Road, Kolkata – 700 071.
And its factory at Post Box No.227
Tiruvottiyur, Chennai – 600 019. **.....**Respondent
(M/s. S. Ramasubramaniam& Associates
Advocate for Respondent)

Dates of hearing : **21-12-2021; 28-12-2021; 11-01-2022; 25-01-2022; 08-02-2022; 22-02-2022; 08-03-2022 and 22-03-2022**

Date of order: **12-04-2022**

The ReviewPetition No. 8 of 2021 in D.R.P.No.18 of 2013 came up for final hearing on 22.03.2022.The Commission, upon perusal of the petition and connected

records and after hearing the submissions of the petitioner hereby makes the following order:-

ORDER

1. Prayer of the Petitioner in R.P No. 8 of 2021:-

The petitioner, Tamil Nadu Generation and Distribution Corporation Limited, has filed this petition with the following prayer –

(i) Condone the delay of 84 days in filing the Review Petition against the Order dated 17-08-2021 in D.R.P.No.18 of 2013 passed by the Commission,

(ii) To entertain the review petition and to pass such further or other Orders as the Commission may consider fit and expedient in the facts and circumstances of the case.

2. Facts of the case:-

In the petition filed by M/s.ITC Limited against Tamil Nadu Generation and Distribution Corporation Limited, in D.R.P.No.18 of 2013, Commission delivered its Order on 17.08.2021. TANGEDCO has filed this Review Petition against the impugned Order stating that the Commission has not considered applicable laws, Rules and Regulations and binding precedents while passing the impugned Order dated 17.08.2021; such Order dated 17.08.2021 suffers from error apparent on the fact of the record and is liable to be reviewed under Regulation 43 of the TNERC Conduct of Business Regulations, 2004.

3. Application for condonation of delay in filing the review petition:-

3.1. The petitioner filed this Review Petition against the order dated 17.08.2021 passed by the Tamil Nadu Electricity Regulatory Commission in D.R.P.No.18 of 2013.

3.2. The Order dated 17.08.2021 in D.R.P.No.18 of 2013 passed by this Tamil Nadu Electricity Regulatory Commission (TNERC) was webhosted on 27.08.2021. The issue involved in the above D.R.P.No.18 of 2013 is verification of Status of Captive Generating Plants for non-compliance of consumption criteria for the financial year 2009-2010 as per the Electricity Rules 2005.

3.3. Subsequent to the grant of approval on 18.11.2021 to file Review Petition by Chairman cum Managing Director, the Review Petition has been prepared and got approved for filing on 02.12.2021. That the above delay was due to the procedure required to be followed by the petitioner before granting approval to file the Review Petition. The decision making process involves more than one person and two to three departments of the Petitioner Organization. The delay was not intentional.

3.4. That in the above process, a delay of 84 days occurred in filing the Review Petition. The delay is not intentional. The Petitioner has a good case on merits and the issue involved in this Review Petition is an important issue affecting the finances of the Petitioner adversely.

3.5. For the above reasons, and for such other reasons as may be urged at the time of hearing, the Petitioner prayed that this Commission may condone the delay of 84 days in the filing of the Review Petition from the date of webhosting the D.R.P.No.18 of 2013 and to entertain the Review Petition.

4. Contention of the Petitioner:-

4.1. The Regulation 43 of the TNERC-Conduct of Business Regulations-2004, as brought under the powers vested with the Commission under Section 181 of the Electricity Act,2003, explains the power and procedure, to review the decisions, directions and orders of the Commission on the following grounds, when such decision, direction or order was made under,

i. Mistake of fact
ii. Ignorance of material fact
iii. Any error apparent on the face of the record

4.2. The Commission has webhosted its Order in D.R.P.No.18 of 2013 dated 17.08.2021, in the website of the Commission on 27.08.2021. This order covers, the matters connected with the Verification of Status of Captive Generating Plants for non-compliance of consumption criteria for the financial year 2009-2010.

4.3. On a complete study of the entire order of the Commission dated D.R.P.No.18 of 2013 dated 17.08.2021, the Petitioner sees that there are certain points, where there are certain errors on the face of the record and also ignorance of certain material facts, as explained below and therefore, it has become just and necessary that the order of the Commission sought to be reviewed, on the above three grounds on the below explained matters.

4.4. The Commission passed an order on 17.08.2021, in D.R.P.No.18 of 2013 the relevant portion which held as follows:

"xxxx

11.15.2. From the submissions of both the parties, it is observed that the petitioner (captive user) generates the power in two places viz., Tirunelveli and Theni and it is adjusted in its user HT service connection available in Chennai/North circle. The power is transmitted from the generating station to user end in another place which is not connected through a dedicated transmission lines from its generating plant. When the petitioner is connected through Distribution feeders, it is subjected to normal load shedding also like all other LT/LTCT consumers.

11.15.3. The Government of Tamil Nadu vide Letter No. (Ms) No.121, Energy dated 22-10-2008, announced the Restriction & control measures in the State and 40% power cut on Base demand and Base energy was imposed on HT consumers with effect from 01-11-2008. The HT consumers were allowed to consume the power @ 60% quota on Base demand/energy and 5% of such quota was allowed for essential lighting and security purposes during Evening peak hours (i.e., 18.00 to 22.00 hours). And subsequently, TANGEDCO (erstwhile TNEB) revised the % of power cut according to the availability of power on their side in between the financial year. Exact availability of power to the consumer against the Base demand / Base energy is calculated below:

11.15.4. Also, the Government of Tamil Nadu vide G.O.Ms.No.10 Energy (C3), 27th February 2009, issued the following directions in public interest–

"In exercise of the powers conferred by sub-section (1) of Section 11 of the Electricity Act, 2003 (Central Act 36 of 2003), the Governor of Tamil Nadu hereby issues the following directions in the circumstances arising in the public interest namely:-

(i) All power generation units operating Tamil Nadu shall operate and maintain generating stations to maximum capacity and Plant Load Factor (PLF); and

(ii) All generating stations shall supply all exportable electricity generated to the State grid for supply to either Tamil Nadu Electricity Board, or to any other HT consumers within the State as per the regulations notified in this regard by the Tamil Nadu Electricity Regulatory Commission."

As a result of the above Government order, all the generators were directed to generate the power to their maximum extent of capacity and

there was no restriction on the generation side of the generator including captive users.

11.15.5. Also it is an admitted fact that there were many scheduled and unscheduled load shedding throughout the State as stated by the petitioner. The Government of Tamil Nadu directed the load shedding at the range of 2/4/10 hours in various feeders and unscheduled load shedding due to Demand-supply issue. HT services are available in the same feeder which feed supply other LT/LTCT category consumers and hence, the HT services were also affected due to this load shedding in addition to their power cut imposed to HT services.

11.15.6. In the instant case on hand, it is seen that the consumer has adjusted almost their entire industrial consumption against its wheeled power at 96.7% i.e., in 11 months out of 12 months and balance of current month's generation was taken to banking. The petitioner had no other arrangement for sale of power from such source. It could be inferred that if the petitioner had been permitted either by way of higher quota or more hours of power supply at its user end, the captive consumption would have been definitely more, in which case the petitioner could have satisfied the conditions of rule 3.

11.15.7. It may be pertinent to mention here that the Distribution Licensee is not expected to receive revenue from the consumers when there is no adequate supply of power. Resultantly, no compensation in the form ofcross subsidy surcharge is leviable. It has been affirmed by the Hon'ble APTEL in M/s. Steel Furnace Association of India Vs PSERC and Anr. In Appeal no.38 of 2013 in its Order dated 01-08-2014 at para 31, 32 as below :

31. … when the power cut is imposed on a subsidizing consumer, the Distribution Licensee is not expected to receive revenue for electricity from such consumers as during that period, there is no supply of power.

32. If the consumers do not procure power from the market through open access under such conditions of power cuts imposed on them by the Distribution Licensee and shut down their plant, no energy will be consumed by them and no charges will be collected by the Distribution Licensee for the period of power cut and hence no cross subsidy would be

available from the charges of such subsidizing consumers to the subsidized consumers. Similarly if the power restriction is improved on the industrial consumer by the Distribution Licensee and the consumer shuts down its production accordingly, the power drawal of the consumer will reduce to that extent and on such reduction no charges and consequently no cross subsidy will be collected by the Distribution Licensee for subsidizing the subsidized consumer categories. Therefore, if during the period of power restriction/power cuts, the consumer procures power from the market to continue its production instead of closing it down, no financial loss will be caused to the Distribution Licensee. Hence no compensation in the form of cross subsidy
surcharge is leviable.

Though was a case of Cross subsidy surcharge levied on the power procured from third party sources, Hon'ble APTEL clearly expounded the extent and scope of the Electricity Rules to hold that the Distribution licensee shall not expect revenue from the consumers when the consumers are put to hardship due to power restrictions / power cut in the State.

11.15.8. The Commission is of well considered view that when the Government of Tamil Nadu, on the one hand, directed all the generating stations to operate at their maximum capacity to receive the power, and at the same time limited the allocation to the extent of 60% / 70% level with peak hour restriction and scheduled load shedding vide its Letter dated 22-10-2008, we find that a consumer cannot be penalised. When a consumer is not given even 51% of his requirement, as stated supra, the Distribution licensee in our view cannot expect fulfillment of the conditions of 51% of consumption as required under Rule 3(1)(a).

11.15.9. Rule 3(1)(a) stipulates a power plant to satisfy both the conditions stated therein to qualify as a "Captive generating plant". it is applicable under normal circumstances when the distribution/transmission grid is open to the captive user without any restriction and not when there is no fault on the part of the captive user in consuming power on its side and at a time when stringent measure was imposed both in the form of restricted Quota as well as grid restrictions. We find no merit in insisting on adherence of conditions under rule 3 of the Electricity Rules 2005 for a captive generating plant in such conditions.

11.15.10. In the result, we direct the respondents that the energy accounting may be revised in the light of the above discussion by the Licensee for the year 2009-10 in respect of the petitioner's case; and refund the energy amount paid by the petitioner with interest 12% per annum with effect from 2009-2010within 30 days from the date of this order".

4.5. In accordance with the above, it is stated that Rule 3(1)(a) stipulates a power plant to satisfy both the conditions stated therein to qualify as a "Captive generating plant", it is applicable under normal circumstances when the distribution/transmission grid is open to the captive user without any restriction and not when there is no fault on the part of the captive user in consuming power on its side and at a time when stringent measure was imposed both in the form of restricted Quota as well as grid restrictions. They find no merit in insisting on adherence of conditions under rule 3 of the Electricity Rules 2005 for a captive generating plant in such conditions.

4.6. The Commission passed an order on 03.11.2011 in M.P.No.21 of 2011 in the matter of captive norms verification in terms of the Electricity Rules-2005 during the Restriction and Measures for the financial year 2009-10, the relevant portion is held as follows:

ORDER

Delay condoned. The Commission heard the learned counsel for the petitioner. The counsel admits that the captive consumption has been less than 51% of generated energy which is the limit laid down in clause 3 of the Electricity Rules, 2005 for treating the generation plant as a captive generation plant. The counsel further pleads that the Electricity Rules 2005, more particularly Rule 3 of the said Rules would not apply to

generating plants owned by a single owner such as the petitioner. We are unable to accept this interpretation of the Electricity Rule 2005. All the three wind mills of the petitioner were set up in 2008-09 much after the commencement of the Electricity Rules 2005 and therefore, the said Rules will apply in-toto to the petitioner's plants. Rule 3 of the Electricity Rules, 2005 (vide GSR 379 (E), dated 8-6-2005) is extracted below:

"3. Requirements of Captive Generating Plant- (1) No power plant shall qualify as a Captive Generating Plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant-

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:".

In view of this Rule, if the two conditions (i) & (ii) above are not fulfilled, the power plant shall not qualify as a captive generating plant. By the Petitioner's own admission, they have not consumed the minimum stipulated requirement of 51% of the energy generated. In view of this, the generating plant of the petitioner cannot be treated as a captive generating plant. Hence, the petition is dismissed at the admission stage.

4.7. It was filed Review Petition against the order dated 03.11.2011 in M.P.No.21 of 2011 vide R.P.No.1 of 2012 in M.P.No.21 of 2011 wherein the Commission passed an order on 05.02.2014, the relevant portion which held as follows:

"*5. Findings of the Commission:-*

We have heard the arguments of both parties. The only question to be resolved in this petition is whether the arguments advanced by the learned counsel for the petitioner would justify to bring this case within the scope of review. The counsel for the review petitioner argued that there is a mistake of fact in the order of the Commission dated 03-11-2011. He further argued that as a 100% owner of his captive generating

plant he could comply with provisions of section 2(8) and section 9 of the Act and he is not required to fulfil rule 3 of the Electricity Rules, 2005 prescribing the minimum consumption of 51% by the captive user. This is only an interpretation by the petitioner and not a mistake of fact in the order already passed by this Commission in M.P.No.21 of 2011 dated 03-11-2011. On going through the averments of the petitioner, it is clear that the instant case does not fall within the scope of review, since the petitioner has not brought out any mistake of fact, ignorance of any material fact or any error apparent on the fact of the record. Therefore, the review petition is dismissed."

4.8. The above order of the Commission is squarely applicable to the present case, since the above order was issued for non-compliance of consumption criteria during the period Restriction and Control measures were in force for the financial year 2009-10. Therefore, Respondent herein lost its captive status due to the reason that the Respondent herein has not fulfilled 51% consumption criteria as per the Electricity Rules, 2005 for the financial year 2009-10 thereby the Respondent herein petition in D.R.P.No.18 of 2013 has to be dismissed. While fact being so, the Commission passed impugned order that they find no merit in insisting on adherence of conditions under rule 3 of the Electricity Rules 2005 for a captive generating plant in Restrictions and Control measures in force. Therefore, the said observation is against the core of the issue in the present case and said observation may be termed as ignorance of material fact and error on the face of the record. It is stated that considering the above fallacy and the failure of the Commission in noticing its own previous Order dated 03.11.2011 while deciding D.R.P.No.18 of 2013, it is arguable that Impugned Order dated 17.08.2021 is per incuriam, thereby unsettling the settled position of law that has held the field for over 10 years and has been followed TANGEDCO and collected Cross Subsidy Surcharge for non-compliance captive status during Restriction and Control measures.

4.9. The Commission has erroneously mentioned that the Distribution Licensee is not expected to receive revenue from the consumers when there is no adequate supply of power. Resultantly, no compensation in the form of cross subsidy surcharge is leviable. It has been affirmed by the Hon'ble APTEL in M/s. Steel Furnace Association of India Vs PSERC and Anr. In Appeal no.38 of 2013 in its Order dated 01-08-2014. In this connection, it is most relevant to mention that the above APTEL order dealt that the consumer purchased the third party power purchased during the Restriction and control measures which is not applicable to the present case, since the case on hand dealt only captive consumer for non-compliance of consumption criteria as per Electricity Rules-2005 not third party consumer, thereby the Commission erroneously mentioned the said order and hence said observation may be termed as mistake of fact and error on the face of the record.

4.10. The Respondent has not fulfilled the consumption criteria. Therefore, the Respondent has lost its captive status thereby the captive user of the Respondent is liable to pay Cross Subsidy Surcharge for the adjusted units during the financial Year 2009-2010. In this regard, the Appellate Tribunal for Electricity Ordered in A.No.33 of 2012 dated 18.02.2013, the relevant portion which held as follows:

> *"30. To Sum Up:*
>
> *(a) Rule 3 of Electricity Rules-2005 specifically prescribes that two conditions are to be satisfied by the power plant to be qualified as a captive power plant. If any one of those conditions is not fulfilled, the captive power plant will lose its status and become a generating plant. Hence, the State Commission does not have any powers to relax the provisions of the Electricity Rules-2005.*

(b) In the present case, the Appellant could not satisfy one of the conditions of Rule-3 viz consumption of 51% of the annual aggregate electricity generated by its power plant for captive use during the year 2009-10 due to breakdown in its Steel Plant. Therefore, the power generation from its power plant shall be treated as if it is a supply of electricity by a generating company as per Rule 3(2) of the Electricity Rules-2005. The State Commission does not have any power to relax the requirement of consumption of not less than 51% of the electricity generated from the Appellant's power plant for captive use."

4.11. In accordance with the above order, the observation of the Commission in the impugned order that during the year 2009-10 there was acute power shortage and the TANGEDCO was forced to implement frequent load shedding scheduled, which in turn has badly affected the petitioner, thereby they find no merit in insisting on adherence of conditions under rule 3 of the Electricity Rules 2005 for a captive generating plant in such conditions is not a sustainable one. Further, as per the Hon'ble APTEL Judgment in A.No.33 of 2012, the Commission cannot relax the requirement of consumption of not less than 51% of the electricity generated from the Petitioner's power plant for captive use which is not permissible under law, since the State Commission does not have any powers to relax the provisions of the Electricity Rules-2005. The TNERC has not considered the said order and passed impugned order which is termed as error face of the record.

4.12. The Hon'ble Supreme Court of India in C.A.No.18506-18507 of 2017 dated 13.11.2017 held as follows:

" xxx

*12. The prescription that at least 51% electricity generation should be used for the purpose of his own use*ll*, as has been provided in Rule 3 (1)(a)(ii) of the Rules of 2005, cannot be said to be arbitrary in any manner. In case, for certain months generating plant has to be closed for any reason or for non-compliance of the provisions or for any deficiency,*

the prescription of consumption of 51% on yearly basis takes care of such closure as well. The calculation is provided to be on an annual basis. Thus, provision is quite reasonable, and it cannot be said to be ultravires to the Act and fulfills purpose of the provisions of the Act, and no reading down of provision is called for as prayed. In case, due to force-measure any generating plant has been closed for a certain period, provision of consumption to be seen in annual perspective takes care of such exigency also.
Xxxx "

4.13. In accordance with the above Judgment that in case, for certain months generating plant has to be closed for any reason or for non-compliance of the provisions or for any deficiency, the prescription of consumption of 51% on yearly basis takes care of such closure as well. Therefore, the Respondent is not fulfilled consumption criteria as per the Electricity Rules – 2005 thereby Respondent failed to fulfill the captive status for the financial year 2009-10. TNERC has not considered the said order and passed impugned order which is termed as error face of the record.

5. Reply filed on behalf of the Respondent:-

5.1. As per Regulation 43 of the TNERC Conduct of Business Regulations, 2004, only limited grounds are provided for review of any decision, direction or order of the Commission. Such limited grounds are (a) mistake of fact; (b) ignorance of material fact; and (c) any error apparent on the face of the record. The present Review Petition does not attract the limited grounds of review provided under the said Regulation 43 of the TNERC Conduct of Business Regulations, 2004. It is submitted that the Petitioner has to made out any case relating to (a) mistake of fact; (b) ignorance of material fact; and (c) any error apparent on the face of the record in relation to the Order dated

17.08.2021 in D.R.P.No.18 of 2013. Hence, the present Review Petition is liable to be dismissed at the threshold itself.

5.2. There is no mistake of fact, ignorance of material fact or any error apparent on the face of the record in respect of the Order dated 17.08.2021 in D.R.P.No.18 of 2013. It is submitted that the Order dated 17.08.2021 is a well reasoned order taking into consideration all relevant facts and circumstances of the matter including applicable Laws, Rules and Regulations and therefore it cannot be said by any stretch of imagination that there is any mistake of fact or ignorance of material fact or error apparent on the face of the record. Hence, it is submitted that the present Review Petition having failed to make out any case for review under Regulation 43 of the TNERC Conduct of Business Regulations, 2004 is liable to be dismissed by this Commission.

5.3. The reliance of the Petitioner on the Order dated 03.11.2011 in M.P.No.21 of 2011 and the Order dated 05.02.2014 in R.P.No.1 of 2012 is wholly misconceived for the following reasons:

i. In the Order dated 03.11.2011 in M.P.No.21 of 2011, the Commission dealt with a case where the consumer had admitted captive consumption to be less than 51% of the generated energy. However, in the present case, the Respondent has not admitted that it has failed to satisfy the 51% of the captive consumption requirement and on the contrary, it is a case of the Respondent that it had indeed satisfied the 51% captive consumption requirement on the basis of the Order dated

28.10.2009 in Suomoto proceedings No.1 of 2009 whereby the consumers were permitted to adjust their unutilized banked energy available as on 01.11.2009 in five equal monthly installments from 01.11.2009 to 31.03.2010 in addition to current generation of that month and the subsequent Order dated 29.03.2010 in M.P.Nos.10, 11 and 12 of 2010 whereby for consumers such as the Petitioner who received the quota allocation communication in December 2009, the period of adjustment of unutilized banked energy was extended up to 31.05.2010. Therefore, it is evident that the facts of the matter in M.P.No.21 of 2011 and the present case are different and therefore no reliance can be placed on the said Order dated 03.11.2011 in M.P.No.21 of 2011.

ii. Further, the issue that was raised in M.P.No.21 of 2011 was whether the 51% captive consumption requirement would apply to generating plants owned by a single owner. This issue was answered against the Consumer/Petitioner in M.P.No.21 of 2011 and on this basis, it was held that the 51% captive consumption. The aforesaid issue is completely different from the issue that has been decided in the Order dated 17.08.2021 in D.R.P.No.18 of 2013. In other words, the question that arose for consideration in M.P.No.21 of 2011 and in the present case are completely different and therefore no reliance can be placed on the Order dated 03.11.2011 in M.P.No.21 of 2011. For the aforesaid reasons, it is submitted that the Petitioner's reliance upon the Order

dated 03.11.2011 in M.P.No.21 of 2011 is wholly misconceived and erroneous.

iii. With regard to the Order dated 05.02.2014 in R.P.No.1 of 2012, for the reasons mentioned above; no reliance can be placed on the same in as much as R.P.No.1 of 2012 was a Review Petition filed against the Order dated 03.11.2011 in M.P.No.21 of 2011.

iv. It is pertinent to mention that the Order dated 05.02.2014 in R.P.No.1 of 2012 does not help the case of the Petitioner in any way but on the contrary supports the preliminary objections raised by the Respondent that the present Review Petition is not maintainable. In this regard, it is submitted that the Order dated 05.02.2014 has held that a possible interpretation of Law, Rules and Regulations by a party would not tantamount to a mistake of fact, ignorance of any material fact or error apparent on the face of the record so as to fall within the limited grounds available for Review under Regulation 43 of the TNERC Conduct of Business Regulations, 2004. In other words, it is submitted that the allegations contained in the present Review Petition at best may only be an interpretation of the applicable Law, Rules and Regulations sought to be canvassed by the Petitioner and therefore in the light of the said Order dated 05.02.2014 in R.P.No.1 of 2012, the present Review Petition is not maintainable and deserves to be dismissed by this Commission.

5.4. In the Order dated 17.08.2021 in D.R.P.No.18 of 2013, this Commission has carefully and meticulously appreciated all relevant facts inter-alia relating to the Petitioner's adjustment of almost its entire industrial consumption against its wheeled power at 96.7% in 11 out of 12 months and only balance was taken for banking, the Petitioner did not have any other arrangement for sale of power, the Petitioner, if permitted, either by way of higher quota or more hours of supply would have definitely satisfied the captive consumption requirement, etc. which is evident from the findings of the Commission contained in paragraph-11.15.6. On this basis and for the other reasons contained in the findings of the Commission in paragraph 11 of the Order dated 17.08.2021, the Commission has rightly come to the conclusion that the captive consumption requirement would be applicable under normal circumstances when the distribution/adjustment grid is open to the captive user without any restriction and not when there is no fault on the part of the captive user in consuming power on its side and at a time when stringent measure was imposed in the form of restricted quota as well as grid restriction. Hence, the Commission has held that there is no merit in the Petitioner insisting upon adherence of the captive consumption requirements. In other words, the Commission while recognizing the 51% captive consumption requirement has held that in the special facts of the present case of the Respondent, the same cannot be insisted since (a) there was no fault on the part of the Respondent in consuming power; (b) it was not under normal circumstances; and (c) it was at a time when strict restrictions were imposed preventing the Respondent from consuming power. On this basis and on the special facts and circumstances of this case, it has been held that the insistence of the 51% captive consumption requirement is not sustainable. Therefore, it can be seen

that on a factual finding, the Commission has held that the Respondent would have satisfied the 51% captive consumption requirement had it been in normal circumstances and not a situation where strict restrictions were imposed by the Petitioner. In other words, the Petitioner cannot on the one hand impose strict restrictions preventing the Respondent from consuming power and on the other hand impose penalty for non-consumption of power by the Respondent, which is illogical and this aspect has been recognized and correctly appreciated by the Commission in the Order dated 17.08.2021 in D.R.P.No.18 of 2013. Therefore, the present Review Petition is liable to be dismissed.

5.5. The relevant rules imposing 51% captive consumption requirement having not been challenged would render the Order dated 17.08.2021 unsustainable and subject to Review is totally erroneous and devoid of merits. It is to be noted that such contention was only raised during arguments and is not supported by any pleadings of the Petitioner and for this reason alone, such contention deserves to be dismissed. Further, it is submitted that such contention of the Petitioner is unsustainable in as much as the Commission in the Order dated 17.08.2021 has not in any way infringed upon the relevant rules imposing 51% captive consumption requirement but has only held that the Petitioner cannot insist upon the adherence of the said Rules imposing 51% captive consumption requirement on the Respondent since on the special facts of this case, it is the Petitioner who imposed strict restrictions which prevented the Respondent from consuming power. In short, the Commission has held that the Petitioner cannot seek to benefit by way of penalizing the Respondent when it was the Petitioner who imposed restrictions as a result of which the Respondent was unable to consume power.

Therefore, the Petitioner's contention that the said Rules have to be challenged failing which the Order dated 17.08.2021 would be rendered unsustainable is contrary to law and facts. It is reiterated that the Commission has only held that in the special facts of this case, the insistence of the 51% captive consumption requirement cannot be insisted upon by the Petitioner. Therefore, seen from this perspective, the present Review Petition deserves to be dismissed.

5.6. There is no mistake of fact, ignorance of material fact or error apparent on the face of the record in the Order dated 17.08.2021 in D.R.P.No.18 of 2013. The present Review Petition is not maintainable and deserves to be dismissed.

5.7. The extract of the Order dated 03.11.2011 in M.P.No.21 of 2011 and the Order dated 05.02.2014 in R.P.No.1 of 2012 are admitted and the rest of the contents are denied as false. It is denied that the aforesaid orders are squarely applicable to the present case. It is also denied that the Respondent has lost its captive status in non-compliance of 51% of the consumption criteria and therefore D.R.P.No.18 of 2013 ought to have been dismissed. It is denied that there is mistake of fact, ignorance of material fact or error apparent on the face of the record as wrongly alleged by the Petitioner. It is reiterated that the Order dated 17.08.2021 is a well reasoned order based on proper appreciation of all relevant facts and accordingly, the Commission has held that there cannot be insistence of the 51% captive consumption requirement by the Petitioner in as much as it is the Petitioner who had imposed strict restrictions preventing the Respondent from consuming power. Such findings in the Order dated 17.08.2021 is in accordance with the applicable Laws, Rules and Regulations. It is submitted that there is no fallacy or failure by the Order dated 03.11.2011. It is also denied that the Order

dated 17.08.2011 is per incurium and unsettles the settled position of law for over 10 years relating to compliance of captive status. It is submitted that the Commission has not unsettled or infringed the 51% captive consumption requirement but has only held that on the special facts of this case, the same cannot be enforced against the Respondent in as much as it is the Petitioner who restricted the Respondent from consuming power by imposing strict restrictions during the relevant period. It is also submitted that the Order dated 17.08.2021 is not contrary to any of the earlier orders referred to in the present Review Petition by the Petitioner. Further, the contentions raised by the Petitioner in the present Review Petition are the Petitioner's own interpretation of the Laws, Rules and Regulations and the various orders which by no stretch of imagination would tantamount to mistake of fact, ignorance of material fact or error apparent on the face of the record to sustain the present Review under Regulation 43 of the TNERC Conduct of Business Regulations, 2004.

5.8. TheCommission has correctly referred to the Order dated 01.08.2014 in Appeal No. 38 of 2013. The Commission has rightly recognized that the said order relates to a case of cross subsidy surcharge levied on power procured from third party source and observed that the fundamental principal of the said order passed by APTEL is that the distribution licensee shall not expect revenue from consumers when consumers are put to hardship due to the power restrictions/power cut in the state. On the basis of this principle, the Commission has held in the present case that the Petitioner cannot penalize or expect revenue from the Respondent since the Respondent was restricted from consuming power only due to the strict restrictions imposed by the Petitioner in the State. The Petitioner cannot benefit by way of penalty imposed on the Respondent

since the Respondent was restricted from consuming power by the Petitioner itself. Hence, the reliance by the Commission in the Order dated 01 .08.2014 in Appeal No.38 of 2013 is correct and in accordance with law.

5.9. The reliance by the Petitioner on the Order dated 18.02.2013 in A.No.33 of 2012 passed by the APTEL is wholly misconceived. In that case, the consumer was unable to satisfy the 51% captive consumption requirement due to break down of its steel plant. The facts of that case are evidently different from the facts of the present case in as much as in the present case the Respondent was restricted from consuming power by the Petitioner and therefore the Petitioner on the one hand cannot impose restriction on power consumption and on the other hand, levy penalty on the Respondent for non-consumption of power up to 51% to satisfy the captive consumption criteria. Therefore, it is evident that the Petitioner is relying on orders in cases where the facts are entirely different from the special facts of this case. Therefore, the allegations of the Petitioner as contained in paragraph 8 of the Review Petition are devoid of merits and the present Review Petition deserves to be set aside.

5.10. Again, the Order dated 13.11.2017 of the Supreme Court dealt with a situation of closure of the Generating Plant for any reason or for non-compliance of the provisions or for any deficiency or due to force majeure conditions, the prescription of 51% captive consumption requirement on yearly basis deals with such situations. It is submitted that all these scenarios are totally different from the special facts of this case wherein the Respondent was restricted from consuming power for satisfying the 51% captive consumption requirement only because of the strict restrictions imposed by the Petitioner in the State. Therefore, the Commission has rightly held that the Petitioner

cannot receive any benefit from the Respondent since it was the Petitioner which restricted the Respondent from consuming power as mentioned above. This is a very fundamental reasoning that has been adopted by the Commission to render justice and affirm that the Petitioner cannot generate revenue from the Respondent in circumstances when the Respondent is put to hardship because of the Petitioner as in the present case. It is reiterated that the Commission has not infringed or relaxed the provisions of the 51% captive consumption requirement in any manner whatsoever but has only held that the Petitioner cannot insist upon compliance of 51% captive consumption requirement and consequently penalize the Respondent for failure to do so in the special facts of this case. Therefore, it is submitted that the Commission has considered all applicable Laws, Rules and Regulations including the relevant Orders of the various Courts and thereafter passed the Order dated 17.08.2021 which is a well-reasoned Order taking into consideration all relevant facts. Therefore, by no stretch of imagination can it be held that there is any infirmity in the Order dated 17.08.2021 either by way of mistake of law, ignorance of material fact or error apparent on the face of the record to warrant interference of the Order dated 17.08.2021 under the limited scope of review provided under Regulation 43 of the TNERC Conduct of Business Regulations, 2004.

5.11. The contentions raised by the Petitioner regarding 51% captive consumption requirement were considered in D.R.P.No.18 of 2013 and therefore it is submitted that the Petitioner is seeking a re-appreciation/re-hearing of its case before the Commission under the guise of review. Such re-appreciation/re-hearing of the case of the Petitioner is not permissible under the limited scope of review provided under Regulation 43 of the

TNERC Conduct of Business Regulations, 2004. Without prejudice to the above, it is submitted that the allegations / contentions raised by the Petitioner in the present Review Petition may at best be the Petitioner's own interpretation of the relevant Laws, Rules and Regulations and such interpretations of the Petitioner cannot be grounds for review of the Order dated 17.08.2021.

6. Rejoinder filed by the Petitioner:-

6.1. The petitioner has stated that the reply affidavit is contradictory in various parts. On the one hand, the Respondent claims in para 3.C.i that it has satisfied the 51% captive consumption requirement, whereas in paras 3.D, 9, 11 & 13, the Respondent has admitted that it has not consumed 51% of the captive consumption but stated that the same has to be overlooked because it was the Petitioner that imposed the 'stringent restrictions'. Thus, the Respondent is not clear on the facts and is blowing hot and cold at the same time. The fact remains that this Commission in the impugned order dated 17.08.2021 has found that the Respondent has not satisfied the 51% captive consumption requirement but has held that the same being attributable to the restrictions imposed by the Petitioner, the Respondent cannot be penalised for the same. It is against this finding that the present Review Petition is filed. The short point raised by the Review Petitioner is that when Rule 3 of Electricity Rules, 2005 prescribes certain mandatory rules, can the same be modified/ exempted or watered down by this Commission, for whatever reason. The answer has to be categorically in the negative since a Tribunal/ Commission created under the Statute cannot read down, strike down or modify provisions of the Statute. That power is vested only with the Constitutional Courts.

6.2. The petitioner has stated that the Respondent failed to note that on a thorough perusal of the entire order passed by this Commission in D.R.P.No.18 of 2013 dated 17.08.2021, there are certain findings of this Commission which amount to error apparent on the face of the record which have been explained in this Review Petition.It is submitted that when it is well settled that a statutory commission does not have the power to strike down or modify or read down a provision of the statute or rule under which it is created, the impugned judgement in making an exemption from Rule 3 for the Respondent has committed an 'error apparent on the face of the record'. Further, it is pertinent to state that this Commission failed to take note of its own order dated 03.11.2011 in M.P.No.21 of 2011 in the matter of captive norms verification on consumption criteria wherein it was held by the TNERC that if the conditions laid down in Rule 3 of the Electricity Rules, 2005 are not fulfilled, the power plant shall not qualify as a captive generating plantand hence the Order dated 17.08.2021 in D.R.P.No.18 of 2013 can be termed as suffering from error apparent on the face of record as it has not followed the binding precedent viz. order dated 03.11.2011.

6.3. The above order of the TNERC is applicable to the present case, since the above order was issued for non-compliance of consumption criteria during the period when the Restriction and Control measures were in force for the financial year 2009-10. Therefore, Respondent herein lost its captive status due to the reason that the Respondent herein has not fulfilled 51% consumption criteria as per the Electricity Rules, 2005 for the financial year 2009-10. Thus, the order in D.R.P.No.18 of 2013 is liable to be reviewed.

6.4. While being so, the TNERC ought not to have passed impugned order stating that they find no merit in insisting on adherence of conditions under Rule 3 of the Electricity Rules 2005 for a captive generating plant when Restrictions and Control measures were in force. The said finding amounts to reading down Rule 3 of the Electricity Rules 2005 and thus the order suffers from error apparent on the face of the record.

6.5. The impugned order suffers from error apparent on the face of the record in so far as it does not follow this Commission's previous Order dated 03.11.2011, thereby unsettling the settled position of lawthat has held the field for over 10 years and which has been followed by TANGEDCO while collecting Cross Subsidy Surcharge for non-compliance of captive consumption conditions during Restriction and Control measures.

6.6. The Commission has erroneously rendered a finding that the Distribution Licensee is not expected to receive revenue from the consumers when there is no adequate supply of power. Resultantly, the impugned order finds that no compensation in the form of cross subsidy surcharge is leviable by relying on findings in order dated 01-08-2014of the Hon'ble APTEL in M/s. Steel Furnace Association of India Vs PSERC and Anr in Appeal No.38 of 2013. In this regard, it is pertinent to mention that the above APTEL order dealt with a case of a consumer purchasing power from a pure third party.The present case is one where the consumer has lost the captive generating plant status due to non-compliance of Rule 3 of the Electricity Rules, 2005. Therefore, the reliance on the Steel Furnace Association case is not justified and amounts to error

apparent on the face of the record. Further, the Commission has not noted the fact that the Respondent satisfied the 51% captive consumption requirement on the basis of the Order dated 28.10.2009 in Suo Moto proceedings No.1 of 2009 whereby the consumers were permitted to adjust their unutilized banked energy available as on 01.11.2009 in five equal monthly installments from 01.11.2009 to 31.03.2010 in addition to current generation of that month and the subsequent Order dated 29.03.2010 in M.P.Nos.10 11 and 12 of 2010 whereby for consumers such as the Respondent herein who received the quota allocation communication in December 2009, the period of adjustment of unutilized banked energy was extended up to 31.05.2010. Therefore, it is evident that the facts of the matter in M.P.No.21 of 2011 and the present case are one and the same therefore reliance can be placed on the said Order dated 03.11.2011 in M.P.No.21 of 2011.

6.7. The Respondent has admitted that the issue of whether the 51% captive consumption requirement would apply to generating plants owned by a single owner was raised in M.P.No.21 of 2011. Similarly, the same issue was raised in D.R.P.18 of 2013 is also whether the 51% captive consumption is satisfied by the generating plant. From the above, it is revealed that in both cases, the issue was involved in the matter of whether the 51% captive consumption criteria is satisfied by the generating plant as per the Electricity Rules,2005. Therefore, the aforesaid orders operate as binding precedent and failure to follow them in the impugned order amounts to error apparent on the face of the record. It is stated that the Respondent has not fulfilled the consumption criteria as per Rule 3 of the Electricity Rules, 2005. Therefore, the Respondent has lost its

captive status thereby the Respondent is liable to pay Cross Subsidy Surcharge for the adjusted units during the Financial Year 2009-2010.

6.8. As per the above order, the observation of the Commission in the impugned order dated 17.08.2021 that during the year 2009-10 there was acute power shortage and the TANGEDCO was forced to implement frequent load shedding scheduled, which in turn has badly affected the Respondent herein, thereby they find no merit in insisting on adherence of conditions under Rule 3 of the Electricity Rules 2005 for a captive generating plant in such conditions amounts to reading down the rule, which is not within the powers of the Commission. Further, as per the Hon'ble APTEL order dated 18.02.2013 in A.No.33 of 2012, the Commission cannot relax the requirement of consumption of not less than 51% of the electricity generated from the Petitioner's power plant for captive use which is not permissible under law, since the State Commission does not have any powers to relax the provisions of the Electricity Rules-2005. The TNERC has not considered the said order and passed impugned order which is an error apparent on the face of the record.

6.9. The Hon'ble Supreme Court of India in C.A.No.18506-18507 of 2017 dated 13.11.2017 held as follows:

" xxx

> *12. The prescription that at least 51% electricity generation should be used for the purpose of his own use‖, as has been provided in Rule 3 (1)(a)(ii) of the Rules of 2005, cannot be said to be arbitrary in anymanner. In case, for certain months generating plant has to be closed for any reason or for non-*

compliance of the provisions or for any deficiency, the prescription of consumption of 51% on yearly basis takes care of such closure as well. The calculation is provided to be on an annual basis. Thus, provision is quite reasonable, and it cannot be said to be ultravires to the Act and fulfills purpose of the provisions of the Act, and no reading down of provision is called for as prayed. In case, due to force-measure any generating plant has been closed for a certain period, provision of consumption to be seen in annual perspective takes care of such exigency also.

xxxx "

6.10. As per the above judgment that in case if a generating plant has to be closed for any reason or for non-compliance of the provisions or for any deficiency, the prescription of consumption of 51% on yearly basis takes care of such closure as well. Therefore, the Respondent has not fulfilled consumption criteria as per the Electricity Rules – 2005 and therefore, the Respondent has lost the captive status for the financial year 2009-10. The TNERC has not considered the said order and passed impugned order which is error apparent on the face of the record.

6.11. Since the impugned order of this Commission has not considered applicable laws, Rules and Regulations and binding precedents while passing the impugned order dated 17.08.2021, the Order dated 17.08.2021 suffers from error apparent on the face of the record and is liable to be reviewed under Regulation 43 of the TNERC Conduct of Business Regulations, 2004. Therefore, it is submitted that the petitioner is not seeking a re-hearing of its case before the Commission under the guise of review. The Commission can review its own order under Regulation 43 of the TNERC's Conduct Business Regulation 2004.

7. Findings of the Commission:

7.1. We have gone through the Review petition filed by the Tamil Nadu Generation and Distribution Corporation Limited and heard the arguments of both the sides. The delay in filing of the Review Petition is condoned.

7.2. The petitioner has stated that on complete study of the Order of the Commission dated 17.08.2021 in D.R.P.No.18 of 2013, there are certain points, which require the review of the Commission since it was not considered at the time of passing of theimpugned Order.

7.3. The petitioner has referred to the Commission Order dated 03.11.2011 in M.P.No.21 of 2011 and Order dated 05.02.2014 in Review Petition No.1 of 2012 wherein the Commission confirmed the requirement of fulfilling of Rule 3 of the Electricity Rules 2005 by a Captive Generating Plant.

7.4. The petitioner has further drawn our reference to the Appellate Tribunal for Electricity Order dated 18.02.2013 in Appeal No.33 of 2012 and claims that the State Commission cannot relax the requirement of consumption of not less than 51% of the electricity generated from the Petitioner's power plant.

7.5. The petitioner has also referred to the Judgment of Hon'ble Supreme Court of India in C.A.No.18506-18507 of 2017 dated 13.11.2017 and claims that, in case for

certain months generating plant has to be closed for any reason or for non-compliance of the provisions or for any deficiency, the prescription of consumption of 51% on yearly basis takes care of such closure as well and further states that, in the present case on hand, the respondent has not fulfilled the criteria as stipulated under Rule 3(1) of the Electricity Rules, 2005 as stated supra.

7.6. On the strength of these orders, the Review petitioner has prayed to review the Order in D.R.P.18 of 2013.

7.7. Having considered the rival submissions, we are of the view that no case arises for review as the grounds agitated by the petitioner does not fall within the scope of Regulation 43, namely, the mistake of fact, ignorance of any material fact or any error apparent on the face of the record.

7.8. It is seen that the appeal against the order of the Commission is sought to be made in the guise of review. The petitioner has not pointed out as to where the mistake of fact, ignorance of any material fact or any apparent error on the face of the record lies and instead the petitioner is agitating the issue afresh.

7.9. The crux of the impugned order which is sought to be reviewed is that when the Licensee, namely, TANGEDCO is not able to supply power, the adherence to Electricity Rules cannot be insisted upon and the Review Petition does not deal with the same. Instead, the petitioner has sought rely on the earlier orders of the Commission in M.P. No. 21 of 2011 and R.P. No. 1 of 2012 which rejected the case of the petitioner for seeking relaxation of consumption rules.

7.10 In this connection, it is seen that the plea in the case of M.P.No.21 of 2011 is for a direction from the Commission for adjustment of the units generated through windmills with the user end HT SC.No.46 and 75 of Sivaganga EDC/TANGEDCO and also prayed that the CGP was installed for his own consumption as defined in first part clause (8) of Section 2 of the Electricity Act, 2003 and therefore, the petitioner's Windmills cannot be insisted to comply with the two conditions stipulated in the Orders of the Commission. The said case dealt with the general applicability of Rule 3 of the Electricity Rules 2005. Though the period relates to 2009-10, the petitioner has not made any claim for non-fulfilment of Rule 3 with reference to R&C and load shedding in its area.Hence the matter dealt in M.P.21 of 2011 is different from the case on hand. Moreover, no difficulties were faced by the Generators/Captive users due to R&C or load shedding issues were discussed before the Commission in that case M.P.No.21 of 2011.

7.11. The said case is not applicable to the instant case as it was a case pertaining to a generator having openly admitted the non-fulfilment of 51% consumption unlike the present case where the petitioner is agitating the non-fulfilment to the Distribution Licensee's failure to supply power.

7.12. The reliance placed on Appeal No. 33 of 2012 of APTEL and C.A. No. 18506-18507 of 2017 is also not relevant as we have no second opinion on the point that Electricity Rules, 2005 are valid and applicable. The petitioner has raised this issue on the ground that the Commission has relaxed the Electricity Rules in the impugned order which according to it, is impermissible in view of the Hon'bleAPTEL and the Hon'ble

Supreme Court judgment. However, it is to be observed that there is a misconception on the part of the petitioner. The Commission has not relaxed the Electricity Rules as sought to be contended by the petitioner. The Commission has only extended the ratio laid down in Appeal No. 38 of 2013 to the instant case.

7.13. The ratio laid down by the APTEL in Appeal No. 38 of 2013 would be very much relevant to decide the present case as the said ratio was laid down after considering the judgments of Hon'ble Supreme Court in SESA Sterlite case and that of the Tribunal in regard to the liability of a person to pay CSS even when power is not drawn.

7.14. The said judgment of APTEL drew a fine distinction between cases where the Licensee is unable to supply power and cases where the Licensee is ready to supply power but the generator moves out of its fold for open access and upheld the exemption from CSS in such a situation. Thus, the question is whether the Licensee was ready to supply power to the extent sought for by the petitioner and if so, the Cross Subsidy Surcharge becomes payable. It is not the case of the petitioner that it was ready at all times to supply the required power during the period in question and the generator on its own sought power from outside. All that the petitioner states is that the Commission does not have the power of relaxation, which in our view is a concluded issue, on which we have no second opinion. The impugned order makes it explicitly clear that when the Distribution Licensee is not expected to receive revenue, there cannot be levy of CSS.

7.15. In this connection, the following portions of the impugned order would be relevant:-

"11.15.7. It may be pertinent to mention here that the Distribution Licensee isnot expected to receive revenue from the consumers when there is no adequatesupply of power. Resultantly, no compensation in the form of cross subsidysurcharge is leviable. It has been affirmed by the Hon'ble APTEL in M/s.SteelFurnace Association of India Vs PSERC and Anr. In Appeal no.38 of 2013 in its
Order dated 01-08-2014 at para 31, 32 as below –

31. … when the power cut is imposed on a subsidising consumer, theDistribution Licensee is not expected to receive revenue for electricityfrom such consumers as during that period, there is no supply ofpower.

32. If the consumers do not procure power from the market throughopen access under such conditions of power cuts imposed on them bythe Distribution Licensee and shut down their plant, no energy will beconsumed by them and no charges will be collected by the DistributionLicensee for the period of power cut and hence no cross subsidy wouldbe available from the charges of such subsidizing consumers to thesubsidized consumers. Similarly if the power restriction is improved onthe industrial consumer by the Distribution Licensee and the consumershuts down its production accordingly, the power drawal of the consumer will reduce to that extent and on such reduction no chargesand consequently no cross subsidy will be collected by the DistributionLicensee for subsidizing the subsidized consumer categories. Therefore,if during the period of power restriction/power cuts, the consumerprocures power from the market to continue its production instead ofclosing it down, no financial loss will be caused to the DistributionLicensee. Hence no compensation in the form of cross subsidy surcharge is leviable.Though the was a case of Cross subsidy surcharge levied on the power procuredfrom third party sources, Hon'ble APTEL clearly expounded the extent and scope ofof the Electricity Rulesto hold that the Distribution licensee shall not expect revenuefrom the consumers when the consumers areput to hardship due to powerrestrictions / power cut in the State.

11.15.8. The Commission is of well considered view that when the Government ofTamil Nadu, on the one hand, directed all the generating stations to operate at theirmaximum capacity to receive the power, and at the same time limited the allocationto the extent of 60% / 70% level with peak hour restriction and scheduled loadshedding vide its Letter dated 22-10-2008, we find that a consumer cannot bepenalised. When a consumer is not given even 51% of his requirement, as statedsupra, the Distribution licensee in our viewcannot expect fulfilment of the conditionsof 51% of consumption as required under Rule 3(1)(a)".

7.16. In view of the above, we find no case arises for review as, in the present case as well as in the case pertaining M/s. Steel Furnace Association of India Vs. PSERC and another before APTEL, the indisputable fact is that there was power cut and the Licensee was unable to supply power and fulfil its obligation to supply.

7.17. In this regard, it is relevant to point out that Regulation 43(1) of the Tamil Nadu Electricity Regulatory Commission–Conduct of Business Regulations, 2004 provides only three grounds for review namely, mistake of fact, ignorance of any material fact or any error apparent on the face of the record. In our view, none of the grounds set out by the Petitioner above satisfies the grounds for review of the earlier orders of the Commission dated 17.08.2021 in D.R.P.No.18 of 2013, as the Petitioner has failed to point out any case of mistake of fact, ignoranceof material fact or any error apparent on the face of the record. Itis a settled position of law that an appeal cannot be entertained in the disguise of a Review Petition.

7.18. Further as stated in the impugned order when the Government of Tamil Nadu directed all the generating stations to operate at their maximum capacity to receive the

power and at the same time there was allocation of power only to 60% to 70% and load shedding the consumer cannot be peanalized. More importantly when the consumer is not even given 51% of the requirement, the Distribution Licensee cannot expect fulfilment of conditions as required under Rule 3 (1) (a). It hardly matters whether it is a case of third party sale or a case of captive consumer and what matters is whether the Licensee was ready to supply power at all times. When the unindisputable fact in this case is that there was inability to supply power, the review has to fail necessarily and accordingly it fails.

With the above observation, this petition is dismissed.

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission