



## **TAMIL NADU ELECTRICITY OMBUDSMAN**

19- A, Rukmini Lakshmipathy Salai, (Marshal Road),  
Egmore, Chennai – 600 008.

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**BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI**

**Present : Thiru. S. Devarajan, Electricity Ombudsman**

**A.P. No. 70 of 2017**

M/s Aruppukottai Sri Jayavilas Ltd.,  
(Cotton Spinning Mills),  
Melakandamangalam,  
258, Thiruchuli Road, Aruppukottai – 626 101.

. . . . . Appellant  
(Thiru. Gopal Dinakaran &  
Thiru. K. Seshadri, Advocate)

Vs

1) The Chairman,  
TANGEDCO,  
NPKRR Maaligai,  
144, Anna Salai, Chennai – 600 002.

2) The Superintending Engineer,  
Virudhunagar Electricity Distribution Circle,  
TANGEDCO,  
65/1 Ramamoorthy Road,  
Virudhunagar - 626 001.

. . . . . Respondents  
(Tmt. P. Latha, EE/General/Virudhunagar &  
Thiru. P. Balaji, DFC/Regional Office/Tirunelveli)

**Date of hearing: 22.02.2018**

**Date of order : 27.08.2018**

The Appeal Petition dt. 21.11.2017 filed by M/s Aruppukottai Sri Jayavilas (Cotton Spinning Mills), Thiruchuli Road, Aruppukottai was registered as Appeal Petition No. 70 of 2017. The above appeal petition came up for hearing before the Electricity Ombudsman on 22.02.2018. Upon perusing the Appeal Petition, counter affidavit and written argument and of the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order;

## **ORDER**

### **1. Prayer of the Appellant :**

The Appellant prayed to issue appropriate orders to the 2<sup>nd</sup> Respondent restraining him from collecting extra levy of ten paise per Kwh over and above the normal tariff, for the entire energy consumed for not availing 33 KV supply and to collect twice the normal rate on exceeded demand alone for their HT SC No.68.

### **2. Brief History of the case :**

2.1 The petitioner industry is manufacturing cotton yarn etc. coming under the jurisdiction of the Second Respondent. The petitioner industry is having High Tension Service Connection in H.T.Sc.No.68 with sanctioned demand of 4990 K.V.A from 31.10.1982.

2.2 On 01.03.2007, the 2<sup>nd</sup> respondent has issued a notice stating that necessary penalty clause will be imposed for exceeding demand over the sanctioned demand on demand factor and energy factor as per TNERC directives (i.e. penalty of 3 times demand charges for the excess maximum Demand and 10 paise per unit for the entire consumption).

2.3 This Original Petition has been filed as directed by the Hon'ble Division Bench of the Hon'ble High Court, Madras in W.A.No.181 of 2015 and M.P.No.1 of 2015 dated 07.11.2017 filed by the SE/Virudhunagar Electricity Distribution Circle against the order dated 06.10.2014 in W.P.No.12236 of 2007 wherein the Hon'ble Division Bench has ordered as follows :-

*"3. The learned Standing counsel for the appellants contended that there is a statutory remedy available to the first respondent by initiating proceedings before the OMBUDSMAN. The said ground is taken up by the appellants in the present appeal.*

*4. Sections 42( 6) an 42(7) of the Electricity Act, 2003, provides for initiating proceedings before the OMBUDSMAN or a redressal forum. In*

*the subject case, the authority, who passed the order himself is a member of the redressal forum. The first Respondent therefore would not be in a position to approach the redressal forum. The other remedy is to approach the OMBUDSMAN. Since the OMBUDSMAN is a statutory authority, the consumer would be in a position to approach the said authority for redressal of grievance.*

*5. We are therefore of the view that interest of justice would be sub-served by granting liberty to the first respondent to move the OMBUDSMAN. In case, appeal is filed before the OMBUDSMAN within a period of four weeks from today, the same shall be considered and disposed of by the said authority on merits and as per law. Status quo as on today shall be preserved for a period of four weeks so as to enable the OMBUDSMAN to pass further orders in the interest of justice"*

2.4 Therefore, the appellant has filed this appeal petition before the Electricity Ombudsman as per court direction.

### **3.0 Argument of the Appellant furnished in the petition:**

3.1 It is submitted that the appellant is an Exporter of Cotton Yarn registered with Cotton Textile Export Promotion Council (TEXPROCIL) and we have been paying the Current Consumption charges regularly without any default as demanded by the respondents every month.

3.2 It is submitted that as per the tariff notification the appellant industry falls under High Tension Tariff IA. The tariff payable by the petitioner would be two part tariff, namely the demand charges and the energy charges. According to the said tariff, the petitioner Mill has to pay Rs.300/- per K.V.A. of maximum Demand sanctioned and paise 350 per unit as energy charges. It is submitted that according to the General provisions in Clause 7.17(1-0) (i) of tariff order applicable to High Tension supply involving a sanctioned demand above 5000 KVA plus 2 per cent marginal adjustment shall be given supply at 33 KV if available in the area or at EHT voltage. Whereas under Clause 7.17(1.0)(ii) in

the case of existing High Tension Consumer whose sanctioned demand exceeds 5000 K.V.A. and who do not avail supply at 33 KV or EHT voltage, they shall be charged an extra levy of ten paise per KWH (Unit) over and above the normal tariff for the entire energy consumed. The extra levy is applicable to all categories of H.T. Consumer till they avail supply at the specified voltage. In other words, a High Tension Consumer who requires sanction for 5000 KVA and above, such consumer shall avail H.T. Supply at 33 K.V or Extra High Voltage supply but not at 11 K.V. Supply. If the High Tension Consumer after getting sanction for more than 5000 KVA fails to avail H.T. supply at 33 KV or E.H.T. Voltage, then such consumer is liable to pay an extra levy of 10 paise per unit over and above the normal tariff for the entire energy consumed. Hence the above provision is applicable to those H.T. Consumers whose sanctioned demand is more than 5000 KVA and sanction of 5000 KVA, or above and non- availing of supply at 33KV or EHT are conditions precedent to levy extra levy of 10 paise per unit over and above the normal tariff for the entire energy consumed for exceeding the demand of 5000 KVA.

3.3 It is submitted that on 01.09.2004, the first Respondent has notified Tamil Nadu Electricity Supply Code, Tamil Nadu Electricity Distribution code and Tamil Nadu Electricity Distribution Standard of Performance Regulations, by virtue of Section 50 read with Section 181 of the Electricity Act 2003. It is submitted that as per Regulation 5(2)(1) in the case of H.T. Supply, the maximum demand charges for any month shall be based on the K.V.A. demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. Whenever the consumer exceeds the sanctioned demand, the excess demand alone shall be charged at double the normal rate. It is submitted that under the tariff order dated 15.03.2003, the H.T. Consumer has to pay Rs.300/- per K.V.A. towards Demand charges. If he exceeds the sanctioned demand, he will have to pay Rs.600/- per K.V.A. of the demand so exceeded being the double the normal rate as prescribed under the Supply code.

3.4 It is submitted that second respondent ignoring the provisions of the Tariff order dated 15.03.2003 and Tamil Nadu Electricity Supply Code as notified by the Tamil Nadu Electricity Regulation Commission on 01.09.2004 issued the proceedings in letter No.SE/VDR/ AO /R/RCS/ A2/F.HT. SC.68/D 2944/2007 dated 01.03.2007, stating that necessary penalty clause will be imposed for exceeding demand over the sanctioned demand on demand factor and energy factor as per TNERC directives (i.e. penalty of 3 times demand charges for the excess maximum Demand and 10 paise per unit for the entire consumption). This penalty will be continued without any prejudice to the action, we are going to take for switching over to higher voltage supply. Further it is submitted that we have sent a detailed reply on 09.03.2007 to the second respondent as to how we are not liable to pay penalty of 10 paise per KWH (Per unit) as our sanctioned demand is only 4990 K.V.A and the penalty clause is applicable to those HT consumers who sanctioned demand is 5000 KVA and above and who do not avail HT supply at High Voltage cannot be applied to us. We have further stated that for exceeding the sanctioned demand of 4990 KVA we have been paying the charges three times of the normal charge (i.e. Rs.600/- per K.V.A. of the exceeded demand and Rs.300/- per K.V.A. of the total recorded demand) and requested not to impose any penalty of 10 paise per KWH.

3.5 It is submitted that when things stood thus, the second respondent in bill dated 30.03.2007 has included the amounts for the payment of 3 times of the normal tariff rate for exceeding the sanctioned demand and extra levy of 10 paise per unit over and above the normal tariff for the entire consumption for non-availing the H.T Supply at the required voltage of 33 K.V.

3.6 It is submitted that the second respondent failed to note that the provisions available in tariff order viz. 7.17 (1.0) (i) and (ii) are applicable only to those consumers, whose sanctioned demand was 5000 KVA and above and who did not avail supply of high voltage (viz. 33 K.V. Supply) but not to the appellant whose sanctioned demand is only 4990 K.V.A. Therefore applying the above

provision to the appellant is unsustainable under Law. It is further submitted that for exceeding the sanctioned demand the petitioner is liable to pay double the normal rate, but not three times of the demand charges as claimed by the 2nd respondent. Such excess demand is against the provisions of supply code. Therefore it is liable to be set aside.

3.7 It is submitted that the 2nd respondent failed to consider that the Regulation 13(2) of the Supply code according to which for any arrears other than the regular, current consumption bill, it is his obligation to inform the appellant by a separate communication with details. Failure to comply the said regulation is also one of the grounds to set aside the proceedings and consequential demand of the second Respondent and failed to consider the reply dated 09.03.2007 given by the appellant. Hence the claim of the second respondent are liable to set aside.

3.8 It is submitted that the sanctioned demand is 4990 K.V.A. and for exceeding the sanctioned demand the appellant is liable to pay double the normal rate on the exceeded demand only under Regulation 5(2)(1) of the Electricity Supply Code. As our sanctioned demand for the month of March 2007 exceeded by 458 KVA the appellant has to pay Rs.1,37,400/- only at the rate of Rs.300/- per KVA in addition to the normal rate of Rs.300/- per KVA that would be charged along with the total recorded demand. The respondent ignoring the above provision has resorted to collect three times instead of double the normal rate.

3.9 It is submitted that the respondent failed to note that by order of the Chairman per B.P.(Ch) No.527 Technical Branch dated 9.12.2005 the Board was pleased to grant 3690 KVA over and above the then existing demand of 1300 KVA at 11 KV supply only.

3.10 It is submitted that the 2<sup>nd</sup> Respondent when the claims are under challenge filed an additional Counter claiming Rs. 44 ,51,240/ - as if the petitioner is liable to pay under Tariff Order 7.17(1.0) (i) and (ii), ten paise per KWH (Unit) over and above the normal tariff for the entire energy consumed during the earlier period from 3/2006. In fact the sanctioned demand was only 4990 as sanctioned by the Board on 9.12.2005 at 11 KV supply. It is submitted that both the demands in Bill No.68 and 30.03.2007 are against tariff order and Tamil Nadu Supply Code 2004.

3.11 The appellant therefore humbly prays that this Hon'ble Ombudsman may kindly be pleased to consider the above facts and issue appropriate orders to the 2nd Respondent restraining him from collecting excess demand charges for not availing 33 KV supply when the demand as granted by the Board on 09.12.2005 is less than 5000 KVA and permitted the appellant to avail 11 KV supply only and direct the 2nd Respondent to collect twice the normal rate on exceeded demand alone and pass such further or other orders as may deem fit and proper and thus render justice.

#### **4.0 Argument putforth by the Respondent in the counter :**

4.1 The petitioner mill company is in the name of Aruppukottai Sri Jayavilas Ltd., having the High Tension Service No.68 with a sanctioned demand of 4990 KVA in 11 KV Feeder at Aruppukottai Division in Virudhunagar Electricity Distribution Circle.

4.2 It is respectfully submitted that the State Commission had passed the Tariff order in exercise of the powers vested in it under section 29 of the Electricity Regulatory Commission Act 1998 with effect from 16.03.2003.

4.3 It is submitted that the Tariff Schedule which was approved and comes into effect from 16.03.2003 are the following :

"7.17 Tariff Schedule  
Part 1 : High Tension Supply

1.0 : General Provisions applicable for High Tension Supply

i. Any High Tension Supply involving a sanctioned demand above 5000 KVA plus 2 percent marginal adjustment shall be given supply only at 33KV, if available in the area or at EHT voltage.

ii. In the case of existing High Tension Consumers whose sanctioned demand exceeds 5000 KVA and who do not avail supply at the voltage indicated in item (1) they shall be charged an extra levy of ten paise per KWH over and above the normal Tariff, for the entire energy consumed. This extra levy is applicable to all categories of HT Consumers till they avail supply at the specified voltage.

v) Billable demand:

In case of two part Tariff, maximum demand charges for any month will be levied on the KVA demand actually recorded in that month or 90% of the sanctioned demand

2.0 High Tension Tariff I.A (like this appellant company).

Tariff Category	Rate in Paise/KWHR (Unit) – Energy Charges	Rate in Rupees / KVA of maximum demand
HT Tariff IA	350	300

4.4 It is submitted that the respondent is liable to pay the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be decided by the commission from time to time whichever is higher. The exceeded demand alone shall be charged double the normal rate as per 5 (2)(1) of TNERC supply code Notification No. TNERC/SC17/1 Dated 21.07.2004.

4.5 Further it is submitted that the TNERC has stated in its notification dated 21.07.2004.

*"AND WHEREAS the regulations providing for, among others, the Electricity supply code shall be subject to the condition of previous publication and has accordingly undergone previous publication"*

Based on the above, the levy of extra 0.10 paise per KWH on exceeding the sanctioned demand of 5000 KVA as per Tariff order dated 15.03.2003 is in order.

4.6 It is respectfully submitted that the levy of ten paise per KWH over and above the normal tariff for the entire energy consumed towards the extra charges for exceeding 5000 KVA for the consumer who do not avail the supply at the required voltage of 33 KVA is in accordance with the commission's tariff order.

4.7 It is contended that appellant is not liable to pay ten paise per KWH over and above the normal tariff, for the entire energy consumed even though the petitioner is not only exceeding the 5000 KVA and but also not availing supply at the required voltage level of 33 KV. Therefore the contention of the appellant is alien to the clause 7.17 Tariff Schedule Part 1 (1.0) (i), (ii) of the State commission's tariff order dated 15.03.2003. Further the appellant contended that they are liable to pay Rs.300/KVA for the exceeded demand not at the rate of Rs.600/KVA. This contention of the appellant is not accordance with the State Commission's regulation 5 (2) (1) of the Tamilnadu Electricity Supply code i.e Whenever the consumer exceed the sanctioned demand the exceeded demand shall alone be charged at double the normal rate (Rs.600/KVA).

4.8 It is submitted that the liability of the appellant for paying extra levy of ten paise for the period from 3/2006 to 10/2007 except 11/2006 for availing the supply more than 5000 KVA in 11 KV feeder not in 33 KV feeder was properly intimated to this appellant vide this office letter No.SE//VDR/AO/R/ RCS/A2/ F.HTSC.68/D.2944/2007 dated 01.03.2007. This appellant has already filed a court case vide WP No. 12236 of 2007 and the case was also set aside the

above letter. The appellant is trying to escape from their liability for payment of Rs.61,47,948/- towards extra levy of ten paise / KWH over and above the normal tariff, for the entire energy consumed in accordance with the tariff order vide 7.17 Tariff Schedule Part 1. (1.0) (i) (ii) for the period from 3/2006 to 10/2007 except 11/2006 as detailed below;

Sanctioned demand 4990 KVA.

Sl. No	Month	Recorded Demand	Recorded Energy Total	Recorded Energy Peak	Rs.0.10/0.02 paise per Units plus E.Tax
01.	03/2006	5184	1828000	408300	200514
02.	04/2006	5232	3292729	836820	363310
03.	05/2006	5472	3482160	869160	383879
04.	06/2006	5520	2787496	712479	307649
05.	07/2006	5472	2323640	584454	256256
06.	08/2006	5496	2737650	674549	301619
07 .	09/2006	5448	3268393	814653	360289
08.	10/2006	5232	2574734	624212	283456
09.	12/2006	5136	2947557	749756	325238
10.	01/2007	5376	2655843	701002	293585
11.	02/2007	5400	2282564	564817	251530
12.	03/2007	5448	3275623	816255	361082
13.	04/2007	5400	3267900	841560	360802
14.	05/2007	5352	3257160	811260	359038
15.	06/2007	5328	3488040	867120	384454
16.	07/2007	5400	3362760	825960	370435
17.	08/2007	5016	3214080	798180	354240
18.	09/2007	5064	3257280	753480	357837
19.	10/2007	5202	2498055	497100	272735
			Grand Total		6147948

4.9 It is submitted that the appellant had sanctioned demand of 4990 KVA only but they have reached 5448 KVA during the month of March 2007. In this connection, it is relevant to note the method of calculating the billable demand charge and excess demand charges in accordance with Tariff order vide 7.17 tariff schedule, Part 1 (1.0) (V) and Regulation 5 (2) (i) of the Tamilnadu Electricity supply code as follows :

Billable demand calculation

Tariff order vide 7.17 Tariff Scheduled, Part 1 (1.0) (V)

(v) Billable demand: In case of two part tariffs, maximum demand charges for any month will be levied on the KVA demand actually recorded in that month or 90% of the sanctioned demand which is higher.

1) Actual Recorded Demand .... 5448 KVA.

2) 90% the Sanctioned demand

$$90\% \times 4990 = 4491 \text{ KV A.}$$

4.10 In accordance with the above mentioned regulation as above, actual recorded demand or 90% sanctioned demand whichever is higher is billed as billable demand i.e. 5448 KV A.

4.11 From the above, it may be revealed that the appellant is liable to pay the demand charges for the maximum demand recorded at 5448 KVA. ie  $5448 \times 300 = \text{Rs. } 16,34,000/-$  since demand charges is fixed charges in section 45 (3) (a) of the Electricity Act 2003.

Excess Demand Charge :

Whenever the consumer exceeds the sanctioned demand, excess demand charges shall be charged for exceeded demand at double the normal rate.

1) Sanctioned demand 4990 KV A

2) Recorded demand 5448 K v A

3) Exceeded demand 458 KVA

4) Excess charges has to be levied:  $458 \times 600 = \text{Rs. } 2,74,800/-$

4.12 From the above, it may be clearly understood that the appellant is liable to pay a sum of Rs.2,74,800/- towards the excess charges in accordance with the state commission regulation in force.

4.13 It is submitted that the additional demand of 3690 KVA was permitted to this consumer based on the order of Chairman per B.P. (CH) No.527 Tech. Branch dated 09.12.2005 at 11 KV supply. Based on the above order the appellant is liable to utilise the demand up to 4990 KVA at 11KV. The excess demand charges and extra levy of ten paise for total units consumed shall be levied only when the consumer exceeds the demand more than 5000 KVA at 11 KV feeder.

4.14 It is submitted that the levy of excess demand charges at the double of the normal rate and levy of extra ten paise / unit for total consumption (besides with extra 20% for peak hour consumption) for exceeded demand beyond 5000 KV A when the petitioner avail the supply at the voltage of 11 KV instead of 33 KV are well in accordance with the State Commission Regulation 5(2) (1) of the Tamilnadu Electricity Supply code. There is no such deviation as contented by the appellant.

4.15 For the reasons stated above, it is prayed that this Hon'ble Ombudsman may be pleased to dismiss the petition as devoid any merit and thus render justice.

**5. Hearing held by the Electricity Ombudsman:**

5.1 To enable the Appellant and the Respondents to put forth their arguments in person, a hearing was conducted on 17.11.2017.

5.2 Thiru. Gopal Dinakaran, General Manager of the Petitioner company & Thiru. K. Seshadri, Advocate had attended the hearing and putforth their arguments.

5.3 Tmt.P.Latha, EE/General/Virudhunagar & Thiru.P.Balaji, Deputy Financial Controller / Regional Office/Tirunelveli attended the hearing on behalf of the respondents and putforth their arguments.

**6.0 Arguments putforth by the appellant on the hearing date:**

6.1 The appellant has reiterated the arguments furnished in the appeal petition.

6.2 The appellant has argued that as per the provisions they are not liable to pay penalty of 10 paise per KWH (Per Unit) as their sanctioned demand is only 4990 K.V.A. and the penalty clause is applicable to those H.T. Consumers whose sanctioned demand is 5000 K.V.A. and above and who do not avail H.T. Supply at 33KV/110KV.

6.3 Further the appellant has argued that for exceeding the sanctioned demand the petitioner is liable to pay double the normal rate, but not three times of the demand charges as claimed by the 2nd respondent. Since such excess demand is against the provisions of supply code, he requested to set aside the same.

6.4 The appellant has argued that as per the Regulation 13(2) of the Supply code, it is obligatory on the part of the respondent to inform the appellant by a separate communication with details for collection of any arrears other than the regular current consumption bill. Failure to comply the said regulation is also one of the grounds to set aside the proceedings and consequential demand of the second Respondent.

**7.0 Arguments putforth by the Respondent on the hearing date:**

7.1 The representative of respondent has reiterated the contention in the counter affidavit.

7.2 Respondent has argued that the appellant is liable to pay ten paise per KWH over and above the normal tariff, for the entire energy consumed since they

have exceeded 5000KVA right from 3/2006 and also not availing supply at the required voltage level of 33KV as per the clause 7.17 tariff schedule Part I (1) (i) (ii) of the state commission's tariff order dated 15.03.2003. Therefore, the levy of extra 10 paise per KWH for exceeding 5000KVA when the consumer who do not avail the supply at the required voltage level of 33 KVA is in accordance with commission's tariff order dated 15.03.2003.

7.3 Further, the respondent has argued that they have calculated the billable demand charges in accordance with Tariff order vide 7.17 tariff schedule, Part 1 (1.0) (V) and excess demand charges as per Regulation 5 (2) (i) of the Tamilnadu Electricity supply code and there is no deviation in the calculation made.

## **8. Findings of the Electricity Ombudsman:**

8.1 I have heard the arguments of both the Appellant and the Respondent. On a careful consideration of the rival submissions and perusal of documents, the following are the issues to be decided;

(i) What are the rules governing the excess demand charges for HT Supply ? Whether the excess demand charges levied by the respondent is correct ?

(ii) Whether the levy of extra 10 paise per KWH for exceeding 5000KVA when the consumer who do not avail the supply at the required voltage level of 33 KVA is correct ?

## **9. Findings on the first issue :**

9.1 The appellant has argued that for exceeding the sanctioned demand, the licensee have levied thrice the normal rate as against the double the normal rate as per supply code. The respondent has argued that they have calculated the billable demand charges in accordance with Tariff order dated 15.03.2003 vide 7.17 tariff schedule and excess demand charges as per Regulation 5 (2) (i) of

the Tamilnadu Electricity supply code. In this regard I would like to refer the provision prescribed in the Tariff order vide 7.17 tariff schedule, Part 1 (1.0) (v) for billable demand charges which is extracted below:

**“7.17 Tariff Schedule**

**Part 1:**

**High Tension Supply**

**1.0 General Provisions applicable for High Tension Supply**

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*v) Billable Demand: In case of two part tariffs, maximum Demand Charges for any month will be levied on the KVA demand actually recorded in that month or 90% of the sanctioned demand whichever is higher.”*

9.2 On a plain reading the above provision it is noted that in case of two part tariffs, maximum Demand Charges for any month will be levied on the KVA demand actually recorded in that month or 90% of the sanctioned demand whichever is higher. It is for the billable demand for that particular month. For excess demand charges, I would like to refer Regulation 5 (2) (i) of TNERC Supply Code, 2004 which is extracted below:

**“5. Miscellaneous charges**

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**(2) Excess demand charge**

*Whenever the consumer exceeds the sanctioned demand, excess demand charge shall be:—*

- (i) *In the case of HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double the normal rate.”*

9.3 On a plain reading of the above provision it is noted that in the case of HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand ( 90% of the sanctioned demand as per Tariff Order dated 15.03.2003) as may be declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double the normal rate.

9.4 On a conjoint reading of para 9.2 and 9.3, billable demand as per tariff order and excess demand charges as per supply code regulation are mutually exclusive i.e. separate provision to bill excess demand charges. In the case on hand, the appellant has argued that for exceeding the sanctioned demand, the licensee have levied thrice the normal rate as against the double the normal rate. The respondent has argued that they have levied charges only as per tariff order and regulation as per supply code.

9.5 In order to have more clarity, the bill raised by the respondent in respect of 03/2007 is analyzed. The same is given below:

Bill for the month of 03/2007:

1) Actual recorded demand	-	5448 KVA
2) Sanctioned demand	-	4990 KV A
3) 90% of the sanctioned demand	-	4491 KVA
4) Exceeded demand	-	458 KVA

(i) Billable Demand as per para 9.1 : Maximum Demand Charges for any month will be levied on the KVA demand actually recorded in that month or 90% of the sanctioned demand whichever is higher.

1) Actual recorded demand	-	5448 KVA
2) 90% of the sanctioned demand	-	4491 KVA

i.e. 5448 KVA x Rs.300/- - Rs.16,34,000/-

Excess Demand Charges as per para 9.2: The exceeded demand shall alone be charged at double the normal rate.

i.e. 458 KVA X Rs.600 - Rs.2,74,800/-

9.6 As per my findings in para 9.4 and 9.5, the calculation made by the respondent is in accordance with Tariff order dated 15.03.2003 and as per Regulation 5 (2) (i) of the Tamilnadu Electricity supply code. Therefore the argument of the respondents that they have calculated the billable demand charge and excess demand charge only in accordance with Tariff order vide 7.17 tariff schedule, Part 1 (1.0) (V) and Regulation 5 (2) (i) of the Tamilnadu Electricity supply code is acceptable to me.

#### **10. Findings on the second issue :**

10.1 The appellant in his argument has stated that as per the provisions they are not liable to pay penalty of 10 paise per KWH (Per Unit) as their sanctioned demand is only 4990 K.V.A. and the penalty clause is applicable to those H.T. Consumers whose sanctioned demand is 5000 K.V.A. and above and who do not avail H.T. Supply at 33KV/110KV.

10.2 Respondent in their argument have stated that the appellant is liable to pay ten paise per KWH over and above the normal tariff, for the entire energy consumed since they have exceeded 5000KVA right from 3/2006 and also not availing supply at the required voltage level of 33KV as per the clause 7.17 tariff schedule Part I (1) (i), (ii) of the state commission's tariff order dated 15.03.2003.

10.3 As the respondent has quoted clause 7.17 tariff schedule Part I (1) (i), (ii) of the state commission's tariff order dated 15.03.2003 to levy penalty of 10 paise per KWH (Per Unit) over and above the normal tariff for the entire energy consumed since the appellant industry has exceeded 5000KVA and also not availing supply at the required voltage level of 33KV, I would like to refer commission's tariff order dated 15.03.2003 which is extract below:

*"7.17 Tariff Schedule*

*Part 1 : High Tension Supply*

*1.0 : General Provisions applicable for High Tension Supply*

*i. Any High Tension Supply involving a sanctioned demand above 5000 KVA plus 2 percent marginal adjustment shall be given supply only at 33KV, if available in the area or at EHT voltage.*

*ii. In the case of existing High Tension Consumers whose sanctioned demand exceeds 5000 KVA and who do not avail supply at the voltage indicated in item (1) they shall be charged an extra levy of ten paise per KWH over and above the normal Tariff, for the entire energy consumed. This extra levy is applicable to all categories of HT Consumers till they avail supply at the specified voltage."*

10.4 On a plain reading of the above provision it is noted that in the case of existing High Tension Consumers (availing 11KV / 22KV supply) whose sanctioned demand exceeds 5000 KVA (5100 KVA i.e. with 2 percent marginal adjustment) and who do not avail supply at 33KV voltage shall be charged an extra levy of ten paise per KWH over and above the normal Tariff, for the entire energy consumed. This extra levy is applicable to all categories of HT Consumers till they avail supply at the specified voltage.

10.5 The appellant in his argument has stated that they are not liable to pay penalty of 10 paise per KWH (Per Unit) as their sanctioned demand is only 4990 K.V.A. and the penalty clause is applicable to those H.T. Consumers whose sanctioned demand is 5000 K.V.A. and above and who do not avail H.T. Supply at 33KV or at EHT voltage.

10.6 The respondent in their argument have stated that the appellant is liable to pay ten paise per KWH over and above the normal tariff for the entire energy

consumed since they have exceeded 5000KVA right from 3/2006 and also not availing supply at the required voltage level of 33KV as per the clause 7.17 tariff schedule Part I (1.0) (i), (ii) of the state commission's tariff order dated 15.03.2003. Further it is stated, the liability of the appellant for paying extra levy of ten paise for the period from 3/2006 to 10/2007 except 11/2006 for having exceeded 5000 KVA demand in 11 KV feeder and not in 33 KV feeder supply was properly intimated to this appellant vide letter dated 01.03.2007.

10.7 Further, the appellant in his argument has stated that the 2nd respondent has failed to consider the Regulation 13(2) of the Supply code according to which for any arrears other than the regular, current consumption bill, it is his obligation to inform the appellant by a separate communication with details. Failure to comply the said regulation is also one of the grounds to set aside the proceedings and consequential demand of the second Respondent.

10.8 As per my findings in para 10.4, I am of the opinion that in the case of existing High Tension Consumers (in the present case 11KV) whose sanctioned demand exceeds 5000 KVA (5100 KVA i.e. with 2 percent marginal adjustment) and who do not avail supply at 33KV voltage shall be charged an extra levy of ten paise per KWH over and above the normal Tariff, for the entire energy consumed. At the same time it is obligatory on the part of the respondent to inform the appellant by a separate communication with details regarding demand for any arrears other than the regular current consumption bill as per the Regulation 13(2) of the Supply code which is extracted below:

**“13. Servicing of bills**

*(1) For the HT services, bills shall normally be sent by post or by hand delivery or e-mail. Two e-mail ids shall be furnished by the consumer for this purpose. For the purpose of reckoning the due date of payment, the date of sending the e-mail alone will be the reference. The Licensee takes no responsibility for loss in transit. The consumer should notify the concerned office*

*of the Licensee, if no bill or assessment is received. Non-receipt of the bills/ assessments will not entitle the consumer to delay payment of the charges beyond the due date. For LT services, entry in consumer meter card shall be the bill of demand and there will be no separate issue of bill.*

*(2) For any arrears other than the regular current consumption bill, it is the Licensee's obligation to inform the consumer by a separate communication with details."*

10.9 On a plain reading of the above it is to be noted that for any arrears other than the regular current consumption bill, it is the Licensee's obligation to inform the consumer by a separate communication with details. In the present case the respondent has intimated the increase in demand only on 01.03.2007. On perusal of documents it is found that the appellant has exceeded the sanctioned demand right from 03/2006 to 07/2007.

10.10 The respondent after revising the sanctioned demand should have issued proper notice duly intimating fact that the appellant's industry should have to avail 33KV Voltage since they have exceeded 5000KVA at the first instance itself i.e. during 03/2006. But, the respondent has slept over the issue for more than a year and issued demand notice only on 01.03.2007. Further the respondent has given three months notice to switch over supply from 11 KV to higher voltage (i.e. either 33 KV or 110 KV at the convenience of the Appellant) without specifying the availability of source and the feasibility of extending the same. Responding to the respondent's notice the Appellant has requested nine months time for switching over to higher voltage level for which the respondent has neither accepted nor refused. The respondent has failed to reply to the Appellant. Further, having given three months notice period, levying penal charges of 10 paise per Kwh for not availing supply at higher voltage level retrospectively from 3/2006 is not in order. Therefore I am of the opinion that the respondent is eligible to charge an extra levy of ten paise per KWH over and above the normal Tariff, for the entire energy consumed only from the date of completion of three months notice period i.e. from 01.06.2007.

**11. Observation :**

The respondent should have issued notice to the Appellant immediately after exceeding the sanctioned demand of 4990 KVA to switch over supply from 11KV to higher voltage level.

The Appellant exceeded the sanctioned demand of 4990 KVA in 3/2006 but the respondent issued three months notice only on 01.03.2007. The reason for the silence of the respondent for a period of one year to issue the notice to the Appellant is regretted.

**12. Conclusion :**

12.1 As per my findings in para 9, the excess demand charges calculated by the respondent is in accordance with Tariff order dated 15.03.2003 and as per Regulation 5 (2) (i) of the Tamilnadu Electricity Supply Code.

12.2 As per my findings in para 10, the respondent is eligible to charge an extra levy of ten paise per KWH over and above the normal Tariff, for the entire energy consumed only from the date of completion of three months notice i.e. from 01.06.2007.

12.3 A compliance report in this regard shall be furnished to this office within 45 days from the date of receipt of this order.

12.4 With the above findings the AP. No. 70 of 2017 is finally disposed of by the Electricity Ombudsman. No Costs.

**(S. Devarajan)**  
Electricity Ombudsman

To  
1) M/s Aruppukottai Sri Jayavilas Ltd.,  
(Cotton Spinning Mills),  
Melakandamangalam,  
258, Thiruchuli Road,  
Aruppukottai – 626 101.

2) The Chairman,  
TANGEDCO,  
NPKRR Maaligai,  
144, Anna Salai, Chennai – 600 002.

3) The Superintending Engineer,  
Virudhunagar Electricity Distribution Circle,  
TANGEDCO,  
65/1 Ramamoorthy Road,  
Virudhunagar - 626 001.

4) The Chairman & Managing Director,  
TANGEDCO,  
NPKRR Maaligai,  
144, Anna Salai, Chennai -600 002.

5) The Secretary,  
Tamil Nadu Electricity Regulatory Commission,  
19-A, Rukmini Lakshmi pathy Salai,  
Egmore,  
Chennai – 600 008.

6) The Assistant Director (Computer) – **For Hosting in the TNEO Website please**  
Tamil Nadu Electricity Regulatory Commission,  
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