

THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under Section 82(1) of the Electricity Act, 2003)

26th Day of August 2009

PRESENT:

Thiru S. KabilanChairman

Thiru R. Rajupandi Member

D.R.P.No. 5 of 2009 and IA Nos.5 and 6 of 2009

M/s. Hinduja Foundries Limited
Registered Office
Ennore, Chennai-60 057
Rep. by its Chief Financial Officer

.... Petitioner

Versus

1. The Chairman
Tamilnadu Electricity Board
144, Anna Salai
Chennai-600 002

2. The Chief Engineer/NCES
Tamilnadu Electricity Board
144, Anna Salai
Chennai-600 002.

.... Respondents

The above D.R.P.No.5 of 2009 came up for final hearing before the Commission on 29th July, 2009. The Commission upon perusing the D.R.P.No.5 of 2009 and other connected records of the case and after hearing both the parties pronounces the following

ORDER DATED 26th AUGUST 2009

1. Prayer of the Petitioner in D.R.P. No.5 of 2009:

The prayer of the Petitioner in D.R.P.No.5 of 2009 is to set aside the order dated 30-1-2009 issued by the second respondent in Lr.No.CE/NCES/SE/EE/WPP/AEE/F :Hinduja Foundries Limited D1438/09 and the consequent order dated 20.2.2009 issued by the

first respondent in Lr. No.CE/NCES/SE/EE/WPP/A3/F.M/s. Hinduja Foundries Limited D1568/09 and direct the respondents to immediately carry out the name change in respect of the petitioner's Wind Mill HTSC Service Connection, the power of the said windmill are wheeled to the HT Power Connection Nos.1072 and 1347 from 'Ennore Foundries Limited' in terms of the fresh Certificate of Incorporation issued under Section 21 of the Companies Act and permit adjustment of the units generated by the petitioner's wind mills with the petitioner's HT Service Connection Nos.1072 and 1347 without insisting upon entering into any fresh Power Purchase Agreement by the Petitioner with the TNEB or payment of name transfer fee or similar charges.

2. Facts of the case:

The Petitioner is one of the leading foundries in the country and as part of its operations and with a view to develop non-conventional energy sources for its use and other purposes, installed 131 wind mills in Tamil Nadu. The petitioner issued a letter dated 6.1.2009 to the first respondent Board, intimating the name change and requesting that the respondents carry out the name change in its record, especially with regard to its wind mills and the corresponding W.F.S.Nos. The Petitioner was surprised to receive the second respondent's impugned communication dated 30.1.2009 under Lr.No.CE/NCES/SE/EE/WPP/AEE3/F . Hinduja Foundries Limited D 1438 /09, where it sought for payment of an exorbitant sum of Rs.1 lakh towards name transfer fee per HT service connection as also charges towards long term open access, customer application registration fee.

The Petitioner has filed the above DRP to set aside the impugned letter dated 30-1-2009 of the Second Respondent viz. C.E./NCES.

3. **Contentions of the Petitioner:**

- a) The Respondents' action is all the more objectionable since it has the direct result of preventing the use of the units generated by the petitioner's wind mill on such incorrect technical grounds.
- b) The respondents are seeking to illegally benefit out of levying charges that are wholly inapplicable in the case of name change but are also seeking to profit out of units generated by the petitioner and avoid paying any money for the power supplied to its grid.

4. **Contentions of the Respondent Board:**

- a) The DRP is not maintainable as the relief sought thereunder would be violative of the order of the Commission made in M.P.No.41 of 2007 and orders 2 and 3 of 2006.
- b) While referring to the order dated 31-8-2004 issued by the Commission in M.P.No.41 of 2003 the Respondent Board states that the Commission has held that the charges for the name transfer shall be single rate for the wind mill service.
- c) Section 45 of the Electricity Act 2003 provides for the collection of a fixed charge viz. Name transfer fee as fixed by the Commission.
- d) The said order dated 31-8-2004 issued in M.P.No.41 of 2003 nowhere contemplates the name transfer due to succession or sale in respect of the wind mill. Therefore it is not open to the petitioner to misinterpret the order dt.31-8-2004 by reading into it the transfer due to succession or sale even in respect of the wind mill which is applicable only to the LT services such as Domestic, Tiny Industries etc.

5) **Reply affidavit of the Petitioner:**

In its reply affidavit the petitioner contended that there is no necessity in law to enter into a new agreement when only a name change has been sought for. It is further contended that the Petitioner Company continues to be in the Hinduja Group irrespective of the name change from Ennore Foundries to Hinduja Foundries Ltd.

6. **Findings :**

6.1 Non tariff related miscellaneous charges such as service connection charges, meter rent and meter related charges, meter caution deposit, reconnection charges, charges for replacement of meter card, service charge for dishonoured cheque, charges for name transfer, development charges, registration charges, earnest money deposit, current consumption deposit and erection charges were determined by the Commission on 31-8-2004 in exercise of the powers conferred under Sections 45, 46, 47 and 50 of the Electricity Act 2003. The charges were brought into force with effect from 1-10-2004. These charges were finalized with reference to petition No.M.P.41 of 2003 filed by the Tamil Nadu Electricity Board. Para 2.1.8. of the Order of the Commission refers to the representations of various organizations before the Commission on the charges of name transfer.

6.2 Para 2.1.8. is extracted below :

“2.1.8. a) Indian Wind Power Association, in their written submission and during the public hearing expressed their concern for the exorbitant charges for name transfer of services of windmills and prayed for fixing the same at Rs 7500.

b) SIMA have stated that “The decision for transfer of ownership of assets from one owner to another is based on the evaluation of various commercial considerations. This being the case, imposition of abnormally high name transfer fee would adversely affect the cost of the transfer. Thus we, urge the Commission to waive the name transfer fee.”

c) Mr. C.A.Balasubramanian has stated that “ The transfer of properties,either domestic or industrial with power supply from TNEB by sale or legal succession are governed by State Laws and TNEB has nothing to do with the sale or legal succession of

consumer's properties. The exorbitant charges demanded by TNEB for name transfers are not valid, not justifiable as fair and will not stand under the scrutiny of law. Hence the levy of charges for name transfer for all categories of consumers should be deleted."

d) The Planters Association of Tamil Nadu stated that "Commercial category (Tariff-V), the payment of Rs.2000/- for name transfer of service by sale of property is excessive. This should be reduced to Rs.750/-, on par with the fee for name transfer of service in the case of legal succession. Name transfer of HT service, both for legal succession as well as by sale of property should be pegged at Rs.1000/- per service. The rates fixed for transfer for wind power mill is too high. High amounts has nothing to do with the expenditure involved in providing the service by the TNEB.

e) Tamil Nadu Electricity Consumers Association (TECA) noted as to "Whether the name transfer charges for wind energy generators at an incremental rate of Rs.50000/- for each 250 KW incremental capacity are really reasonable."

f) CAG and Mr. V.Rajaraman object to the levy of charges for name transfer of service. They are of the opinion that the levy of exorbitant charges for this simple administrative measure is unnecessary.

g) The Tamil Nadu Varthagar Nala Kazhagam and Kudanthai Unavuporul Varthagar Sangam have questioned the rationale for fixing different charges for name transfer due to legal succession and sale. Is it based on any work study or any other accounting method ? Cuddalore District Chamber of Commerce and Industry and Madurai District Public Welfare Association have also raised similar questions and expressed that the charges for name transfer of windmill services is frightening. They recommend a uniform rate of Rs 100 for LT and Rs 500 for HT."

6.3 Para 2.4. contains the views of the TNEB on the representation regarding charges for name transfer:-

“2.4. Regarding the exorbitant rate said to be charged for name transfer of windmill services, it is to be noted that “ some developers who do not have own or subsidiary industry , initially install windmills and claim 80 % accelerated depreciation in income tax and subsequently opt for sale of windmill to another party having own / subsidiary HT industry and seeks approval of the Board for name transfer of the windmill service. Availing of wheeled energy in HT industry results in avoidance of HT tariff (1) rate to the extent of wheeled quantum and causing revenue loss to the Board and providing substantial benefit for the developer. The amount of transaction of windmills worked out to an average of about Rs 180 lakhs to 200 lakhs per 1000 KW capacity. Hence it is considered that a name transfer fee at 0.5 % of the value of the property transacted is reasonable.” For name transfer of service arising out of sale of property, the sale deed has to be scrutinized thoroughly, which is not applicable when the name transfer is due to legal succession. Hence the difference in name transfer charges. Considering the quantum of work involved, this charge cannot be waived.”

6.4. Para 3.9. of the Order of the Commission on charges for name transfer is reproduced below :

“3.9. The major issues / objections relate to (i) Whether the levy of exorbitant charges for a simple administrative nature is necessary , (ii) Why should there be a different rate for name transfer due to legal succession and sale (iii) What is the justification and logic for the special treatment of windmills. Whether the name transfer charges for windmills at an incremental rate for each 250 KW incremental capacity is reasonable and (iv) Can a reduction and a uniform rate be considered?

TNEB, in their reply to clarifications on this matter, have informed with a working sheet that “ More man power is required for name transfer of service through sale of property than through legal succession due to scrutiny of sale deeds” As regards the windmill services they have replied that “ Some developers, who do not have own or subsidiary industry, initially install windmills and claim 80% accelerated depreciation in income tax and subsequently opt for sale of windmill to another party having own / subsidiary industry and seeks approval of the Board for name transfer of the wind mill service. Availing of wheeled energy in HT industry results in avoidance of HT tariff –1 to the extent of wheeled power, thereby causing revenue loss to the Board and providing substantial benefit to the wind farm developer. The Board has to render frequent services in all such windmill services, that too resulting in loss of revenue. Moreover, review made in some of the cases of name transfer proposals showed that the amount involved in transaction of wind mills worked out to an average of about Rs 180 lakhs to 200 lakhs per 1000 KW capacity. Hence, it was considered reasonable that a name transfer fee at 0.5% of the value of the property transacted be collected “

Commission is not able to appreciate the contention of TNEB that the work involved in the processing of name transfer applications due to legal succession and sale can be so much different. It needs to be noted that the process of name transfer has now been very much simplified. Accordingly, the Commission decides that the charges for name transfer shall be the same irrespective of whether the transfer is due to succession or sale. The hut services, which are categorized as below poverty line group shall be charged at a concessional rate.

As regards the windmills, the Commission appreciates the points raised by TNEB regarding the loss of revenue to Board due to the name transfer in certain cases. The Commission agrees with TECA

regarding the proposed incremental rate for name transfer, based on incremental capacity. The Commission is also not in favour of totally reversing the existing pattern of name transfer charges. In the context of the above, Commission decides to have a single rate for the name transfer of windmill services.”

- 6.5 Schedule 7 of the Order of the Commission prescribes the charges for name transfer. The charges in regard to legal succession and sale of property collected by the TNEB prior to 1-10-2004 are reproduced below:

Sl.No.	Category	Legal succession	Sale of property
III.	Wind Mills		
1.	<i>Upto 250 KW</i>	<i>Rs.50000/-</i>	<i>Rs.50000/-</i>
2.	<i>More than 250 KW to 500 KW</i>	<i>Rs.100000/-</i>	<i>Rs.100000/-</i>
3.	<i>More than 500 KW to 750 KW</i>	<i>Rs.150000/-</i>	<i>Rs.150000/-</i>
4.	<i>More than 750 KW to 1000 KW</i>	<i>Rs.200000/-</i>	<i>Rs.200000/-</i>
5.	<i>More than 1000 KW</i>	<i>Rs.200000 plus 50000 for every additional 250 KW or part thereof</i>	<i>Rs.200000 plus 50000 for every additional 250 KW or part thereof</i>

The TNEB proposed to retain the same charges. The Commission, on the other hand decided to prescribe a uniform charge of Rs. one lakh per service connection irrespective of the capacity of the wind mills as charges for effecting name transfer in regard to legal succession and sale of property.

- 6.6 We would like to observe that change of name of a company in accordance with Section 21 of the Companies Act 1956 does not amount to legal succession or sale. It prescribes the procedure for registration for name change as below :

“A company may, by special resolution and with the approval of the Central Government signified in writing, change its name:

Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company."

6.7 It is evident that what has been proposed by the TNEB and approved by the TNERC is the charge relating to legal succession or sale of property and that the change of name under Section 21 of the Companies Act 1956 is not covered under the above category and therefore the charge of Rs.one lakh per service connection levied by the TNEB should be set aside. Section 23 of the Companies Act 1956, which deals with the effect of change of name is reproduced below :

"23(1) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name."

6.8 Section 23(3) of the Companies Act 1956 makes it clear that the change of name shall not affect any rights or obligations of the Company, or render defective any legal proceedings by or against it and any legal proceedings which might have been continued or

commenced by or against the Company by its former name may be continued by or against the company by its new name.

6.9 We conclude that the Order of the Commission does not prescribe any charge for these categories namely change of name.

7. Conclusion :

The charges levied by the TNEB in their impugned letters D 438/09 dated 30-1-09 and D 1568/09 dated 20-2-09 issued by C.E./NCES as if they relate to legal succession or sale of property are set aside. Any charges paid by the Petitioner will have to be refunded by the TNEB. It is further directed that there will no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under Section 21 of the Companies Act 1956. Mere corrections have to be carried out in the existing agreements as stipulated in Section 23 of the Companies Act 1956. If the distribution licensee desires to levy a charge for mere name change, they may file a petition before the Commission.

8. Appeal:

An appeal against this order lies to the Appellate Tribunal for Electricity as per Section 111 of the Electricity Act 2003 within a period of forty five days.

With the above findings and conclusions D.R.P. No.5 of 2009 and IA Nos.5 and 6 of 2009 in D.R.P.No.5 of 2009 are finally disposed of. No costs.

Pronounced in the Open Court by this Commission on the 26th day of August 2009.

(Sd.....)
(R. RAJUPANDI)
Member

(Sd.....)
(S. KABILAN)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission