

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

PRESENT:-

Thiru.S.Kabilan ... **Chairman**

Thiru.K.Venugopal **Member**
 and

Thiru.S.Nagalsamy **Member**

D.R.P. No. 13 of 2010

LS Mills Limited
 HT SC No.33
 Muthuthevanpatti
 Theni

.... **Petitioner**
 (Thiru. R.S.Pandiyarajan, Advocate for Petitioner)

Vs.

1. The Chief Financial Controller (Revenue)
 Tamil Nadu Electricity Board
 800, Anna Salai
 Chennai – 600 002.

2. The Superintending Engineer
 Theni Electricity Distribution Circle
 Tamil Nadu Electricity Board
 Theni.

.... **Respondents**
 (Thiru.Mohammed Rafi, Advocate for Respondents)

Dates of hearing: 4-1-2011 and 14-3-2011

Date of Order : 14-3-2011

D.R.P.No.13 of 2010 came up for final hearing before the Commission on **14-03-2011**. The Commission upon perusing the above D.R.P.No.13 of 2010 and other connected records and after hearing both sides passes the following:-

ORDER

1. **Prayer in D.R.P. No.13 of 2010:-**

To pass an order setting aside the impugned notice dated 06-09-2010 issued by the Second Respondent as illegal, arbitrary, without the authority of law and against the orders of the Hon'ble Tamil Nadu Electricity Regulatory Commission made in Suo Motu Proceedings No.1 of 2009 dated 28-10-2009 and consequently direct the Second Respondent to refund a sum of Rs.3,79,153.20 with interest at the rate of 18% per annum from 06-08-2010 till the date of payment and pass such further or other orders as the Hon'ble Commission may deem fit and proper.

2. **Facts of the case :-**

2.1 The Petitioner owns Wind Mills coming under the Tirunelveli Electricity Distribution Circle with HT WEG SC No.1926 and exporting to the Respondents TNEB at the above circle for the purpose of captive consumption of the Petitioner. The Petitioner has HT SC No.33 in their Textile Spinning Mills coming under the Second Respondent.

2.2 The Second Respondent has fixed demand and energy quota to the Petitioner vide his letter dated 28-06-2010 as follows for the month of July 2010:

	Normal hours	Peak hours
Energy quota	629499 Units	137419 Units
Demand quota	1182 KVA	1127 KVA

The actual generation from the Petitioner's wind mills for the month of July, 2010 is as below:-

	Normal hours	Peak hours
Energy	612448 Units	119512 Units
Deemed Demand	1074.47 KVA	1048.35 KVA

The actual consumption of the Petitioner for the month of July 2010 is as below:

	Normal hours	Peak hours
Energy	526720 Units	111904 Units
Demand	1159.04 KVA	1061.12 KVA

2.3 The Petitioner states that the Second Respondent raised their Bill No. 58 dated 31-07-2010 in which under column No. 14 (a), (b) and (f) has levied a penalty of Rs.2,49,900/-, Rs.67,381/- and Rs.61,872/- respectively, totaling Rs.3,79,153.20 as penalty for excess consumption of energy and demand during both peak and normal hours without any basis.

2.4 The Second Respondent did not give an opportunity to the Petitioner to verify as to how the penalty calculation has been arrived at. On the other hand,

he has straight away included in the current consumption bill for the month of July, 2010 under threat of disconnection, if the dues are not paid within the due date.

2.5 The Second Respondent without informing the Petitioner has adjusted the above penalty amount also in the Current Consumption Deposit available with the Second Respondent. Therefore, the Petitioner seeks refund of the adjusted amount.

3. **Contentions of the Petitioner:-**

3.1 The Petitioner is a H.T. Consumer and therefore falls within the scope, definition and meaning of the term “consumer” as stipulated in Section 2 (15) of the Electricity Act, 2003. They are using the electrical energy to run their machines which are installed in their various processes.

3.2 Since wind mill generation is an infirm power depending upon the availability of wind in a particular season, the proposed energy would be only tentative / rough. Therefore, that does not mean that it should be taken as a firm commitment and penalty / excess charges could be levied for the consumption over and above the proposed energy as indicated by the wind mill captive users.

3.3 The Second Respondent has failed to give any opportunity to the Petitioner before raising the impugned amount in the Bill dated

31-07-2010 or put on notice the Petitioner as to the proposed levy of penalty and the basis for such levy and has straight away raised the bill.

3.4 The demand raised in Bill No. 58 dated 31-07-2010 by the Second Respondent in so far as it relates to levy of penalty / excess charges for the alleged excess demand and energy quota is liable to be set aside since the Petitioner has not violated the provisions as contained in the Suo Motu Proceedings No. 1 of 2009 dated 28-10-2009 issued by the Tamil Nadu Electricity Regulatory Commission and same order does not contemplate any penal provision for the difference between the rough proposal and actual generation in the wind mills.

3.5 The Petitioner has not exceeded the demand and energy quota fixed by the Second Respondent vide his letter dated 28-06-2010 and limited consumption within the quota. Therefore, the question of levy of penalty does not arise.

3.6 The Petitioner has given a representation to the Second Respondent for refund of the above excess amount. Since there was no response from the Second Respondent, the Petitioner has approached the Madurai Bench of the Hon'ble High Court of Madras by filing Writ Petition No. 10798 of 2010 seeking mandamus to dispose of the representation dated 25-08-2010 given by the Petitioner. The Hon'ble Madurai Bench of the Madras High Court was pleased to

pass orders directing the Petitioner to make a representation to the Second Respondent in the light of the contentions made in the Writ Petition and also directed the Second Respondent to dispose of the said representation on merits and in accordance with law within a period of two weeks from the date of receipt of the representation from the Petitioner. Accordingly the Second Respondent has passed the impugned notice No. 395 dated 06-09-2010 without any basis and hence the same is unsustainable in law.

4. **Contentions of the Respondents in Counter Affidavits :-**

4.1 Due to increase in demand of power and lack in generation, the Government of Tamil Nadu has implemented Restriction and Control measures on the usage of electricity to all Industrial and Commercial consumers in the State. The Tamil Nadu Electricity Regulatory Commission has also agreed and issued order in this regard. Based on the order of the Government, a notice dated 01-11-2008 was communicated to all HT consumers and commercial consumers containing instructions for power cut.

4.2 The demand and energy quota for the H.T. consumers using power partially from their Captive Power Plants have been refixed as per Circular Memo No.CE/Comml/EE/DSM/AEE/PMM/F.Powercut/D.28/2008, dated 17-11-2008. Arrangements have been made to take slot-wise check reading on every Saturday at the generator end and the details of energy actually supplied and shared to various industries who have wheeled energy from the generator have

been communicated to the territorial Superintending Engineers, where the HT Services available at the user end by every Monday, so that the consumption pattern with respect to the total quota fixed in respect of the HT Services, at the receiving end have been checked based on the supply of the power and to take appropriate action.

4.3 The consumer shall not exceed demand / energy quota fixed by the Board for any reasons, either due to outage of generator of their supplier or short supply from their supplier etc and it is their responsibility to monitor their consumption with their generator. The excess demand / energy charges shall be collected at the rate as prescribed by the Hon'ble Tamil Nadu Electricity Regulatory Commission for the violation of quota fixed to the consumer. In the above method, the consumer may use their full wheeled energy without any cut.

4.4 The Petitioner has mentioned total quota including peak hour quota as "Normal quota". After deducting peak hour quota from the total quota, normal i.e. other hour quota was calculated. As such other hour quota fixed was 492080 units. The energy consumed by the Petitioner in the other hour was 526720 units. Therefore the consumer has consumed in excess over the quota and hence penalty was levied. Even though actual generation is more, quota has been fixed according to the proposed energy declared by the Petitioner and industrial consumption during billing time.

4.5 Actual energy will be limited to proposed energy only as declared by the Petitioner as stated in the instructions vide (1) U.O. Letter dated 26-07-2010 and (2) U.O. letter dated 28-07-2010 as per slot wise industrial consumption, quota fixed, wind proposed in respect of HT SC No. 33. It is apparent that the Petitioner has consumed more than that of proposed wind energy during night hours. Hence penalty was rightly levied.

4.6 The Petitioner was permitted to run their industry as per the quota fixed based on the proposed energy (as assured by the Petitioner) throughout the month. Due to the effect of the revised energy and demand quota based on the proposed energy, the 48 hours notice for the quota violation has not been issued. The excess demand and energy charges have been levied based on the revised quota fixed under the proposed units only.

4.7 Levy of penalty is the usual procedure wherever there is excess drawal over and above the quota, since they have consumed over and above the quota fixed, penalty has been levied in the 07/2010 CC bill. Whenever quota is fixed and intimated to the consumer, it has been already specifically stated that as per R & C measures penalty will be levied for the excess drawal over the quota. Hence their statement of "not giving an opportunity is not correct".

4.8 The quota demand and energy may be fixed to a consumer once in a month and the same is fixed based on the proposed energy. Further, if the quota has been revised as per the request of the Petitioner that the demand and energy shall be refixed based on the actual energy by the end of the month it will lead to confusion among the H.T. consumers and the preparation of monthly billing will also become hard.

4.9 Based on the proposed wind energy received from the wind generators, the Tamil Nadu Electricity Board grid have been maintained and the supply of energy have also been determined (i.e.) the power cut position has also been fixed. Hence, in case of failure to provide the power as proposed by the wind generators, the Board will face huge loss, such as (i) to maintain the power cut already declared by the Board based on the proposed wind energy, (ii) the HT consumers having wind generators consume power as per the quota fixed to them based on the proposed wind energy.

4.10 Eventhough actual generation is more, it is limited to proposed generation and industrial consumption whichever is less. Further the Petitioner has got several HT service connections and has filed the present petition only in respect of one service connection namely HT SC 33. The Petitioner has not claimed the relief for the other HT service connection eventhough the facts are similar and penalty was issued. The Petitioner has chosen one HT service connection and has approached on trial and run basis. The Petitioner has not challenged the

levy of penalty with respect to the other service connections namely 7,21,28,48. This would amount to waiver and voluntary relinquishment by the Petitioner.

4.11 The Petitioner's consumption for the month of 07/2010 is 638424 units which are over and above the base energy of 629499 units and there was an excess of 9125 units. While preparing the CC bill for 7/2010, the Second Respondent has erroneously arrived 35,700 units as excess. In this regard, the Second Respondent has been instructed to revise the CC bill for 7/2010 and the excess amount will be adjusted in the ensuing CC bill of the Petitioner.

5. Findings of the Commission:-

The TNEB, in their letter dated 27-6-2010 communicated to the Petitioner that the demand quota for the month of July 2010 would be 1182 KVA and the energy quota 6,29,499 units. The bill of the TNEB for the month of July 2010 indicates that the maximum recorded demand is 1159 KVA and the energy consumed is 6,38,624 units, excess being 9125 units. The bill of TNEB for July 2010 indicated an excess demand charges of Rs.67,381/- and excess energy charges of Rs.3,11,772. The excess energy charges have been levied for 35,700 units as against 9125 units. The TNEB is estopped from going back on the demand and energy quota communicated in advance. We have no hesitation in setting aside the excess demand charges and excess energy charges other than the actual excess of 9125 units. The balance may be refunded by the TNEB to the consumer/generator. The Learned Counsel for

TNEB states that it has refunded to the consumer the excess amount in respect of excess energy consumption.

6. Direction:-

In view of the findings in para 5 above, the impugned Letter No. SE/TEDC/TNI/DFC/AS/HT/Asst/F.PC/D.No.395/10, dated 06-09-2010 of the Second Respondent is set aside. The Respondents are directed to refund the amount of excess charges collected from the Petitioner for the month of July 2010 after recalculating the excess charges as per para 5 of this order and adjusting the amount already refunded by way of adjustment.

7. Appeal:-

An appeal under section 111 of the Electricity Act, 2003 against this order shall lie to the Appellate Tribunal for electricity within a period of 45 days.

(Sd.....)
(S. Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

(Sd.....)
(S.Kabilan)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission