

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

PRESENT:-

Thiru.K.Venugopal Member

and

Thiru.S.Nagalsamy Member

M.P.No.15 & 20 of 2012

M.P.No.15 of 2012

M/s.Goyal Ispat Ltd.
H.T.S.C. No.187
24, Pandalam Sugar Mill Road
Palayanur Post 603 308
Maduranthagam Taluk
Kancheepuram District
Rep. by its Director
Vinod Kothari

..... Petitioner
(Thiru K.Jayachandran,
Advocate for Petitioner)

Vs

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.

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

.... Respondents
(Thiru PH.Vinod Pandian,
Advocate for Respondents)

Dates of hearing for M.P.No.15 of 2012 : 21-05-2012 and 26-09-2012

Date of order : 16-11-2012

M.P.No.20 of 2012

M/s.Sandfits Foundries (P) Ltd.
SF 200/1A, Trichy Road
Ravathur Pirivu
Coimbatore – 402.

..... Petitioner
(Thiru Rahul Balaji,
Advocate for Petitioner)

Vs

1. Tamil Nadu Electricity Board
Represented by its Chairman
144, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer
Coimbatore Electricity Distribution Circle (Metro)
Tamil Nadu Electricity Board
Coimbatore – 641 012.

.... Respondents
(Thiru PH.Vinod Pandian,
Advocate for Respondents)

Dates of hearing for M.P.No.20 of 2012 : 31-07-2012 and 26-09-2012

Date of order : 16-11-2012

1. The Petitioner in M.P.No.15 of 2012 namely, M/s.Goyal Ispat Ltd. has previously filed W.P.No.1781 of 2010 before the Hon'ble High Court of Madras for the issue of a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of writ, calling for the records of the Third Respondent in the Writ Petition namely, the Superintending Engineer, Chengalpattu in Lr.No.SE/CEDC/CGL/AEE/Gen/ CHD/ F.R&CD434/09, dated 24-12-2009 and quash the same as illegal, arbitrary and without authority of law and consequently direct the Third Respondent in the said Writ Petition to permit the Petitioner industry in H.T.S.C.No.187 to avail the optimum demand of 1050 K.V.A. as allowed in letter dated 19-06-2009.

1.1. The above W.P.No.1781 of 2010 has been registered as M.P.No.15 of 2012.

2. The Petitioner in M.P.No.20 of 2012 namely, M/s.Sandfits Foundries (P) Ltd. has previously filed W.P.No.4638 of 2010 before the Hon'ble High Court of Madras for the issue of a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of Writ of Certiorarified Mandamus, calling for the records of the third Respondent in the Writ Petition namely, the Superintending Engineer, Coimbatore in Lr.No.SE/CEDC/M/DFC/AO/R/HT/R&C/F.Cont.Process Ind/10, dated 22-09-2009 issued by him and the consequential refixation of quota as set out in the impugned letter in Lr.No.SE/CEDC/M/DFC/AO/R/HT/R&C/F.Cont.Process Ind/10, dated 04-02-2010 and quash the same as illegal, arbitrary, without authority of law and consequently direct the Respondents to permit the Petitioner to run their industry continuously in optimum demand with restricted power holidays without evening peak hour restrictions as permitted in clause 1 (n) of memo dated 01-11-2008 issued by the third Respondent in the said Writ Petition.

2.1. The above Writ Petition No.4638 of 2010 was subsequently transferred to the Commission and registered as M.P.No.20 of 2012.

3. Both the above petitions came up before the Commission for final hearing on 26-09-2012. Upon perusing both the petitions and the connected records relating to the said petitions and upon hearing both sides in both the above petitions, the Commission passes the following common order as the issue in both the petitions are identical in nature.

COMMON ORDER

4. Prayer of the Petitioner in W.P. No. 1781 of 2010:-

The prayer of the Petitioner in W.P. No.1781 of 2010 namely, M/s.Goyal Ispat Ltd. has been treated as the prayer of the said Petitioner in M.P.No.15 of 2010 also. The said prayer is to set aside Lr.No.SE/CEDC/CGL/AEE/GEN/CHD/F.R&C/D.434/2009, dated 24-12-2009 and direct the Second Respondent namely the Superintending Engineer, Chengalpattu Electricity Distribution Circle to permit the Petitioner's industry in H.T.S.C.No.187 to avail the optimum demand of 1050 KVA as allowed by the aforesaid Second Respondent in his letter dated 19-06-2009.

5. Prayer of the Petitioner in W.P. No. 4638 of 2010:-

The prayer of the Petitioner in W.P.No.4638 of 2010 namely M/s. Sandfits Foundries (P) Ltd. has been treated as the prayer of the said Petitioner in M.P.No.20 of 2012 also. The said prayer is to set aside Lr.No.SE/CEDC/M/DFC/AO/R/HT/R&C/F.Cont.Process Ind/10, dated 04-02-2010 issued by the Second Respondent namely, the Superintending Engineer, Coimbatore Electricity Distribution Circle (Metro), Coimbatore and direct the Respondents to permit the Petitioner to run their industry continuously in optimum demand with restricted power holidays without evening peak hour restrictions as permitted in clause 1 (n) of memo dated 01-11-2008 issued by the aforesaid Second Respondent.

6. Facts of the case of the Petitioner in M.P.No.15 of 2012:-

The Petitioner in M.P.No.15 of 2012 namely M/s.Goyal Ispat Ltd. is a continuous process industry involved in the manufacture of steel rods etc. having H.T.S.C.No.187 with a maximum demand of 1400 KVA sanctioned by the

Superintending Engineer, Chengalpattu Electricity Distribution Circle. The Superintending Engineer, Chengalpattu Electricity Distribution Circle in letter dated 19-06-2009 has permitted the Petitioner to run their industry continuously with optimum demand of 1050 KVA for restricted number of 24 days in a month. The Superintending Engineer, Chengalpattu Electricity Distribution Circle has issued order dated 24-12-2009 informing that the revised demand quota of 1050 KVA fixed in letter dated 19-06-2009 was cancelled from 03-01-2010 since the Petitioners are availing wind energy and the Petitioner by the said letter was also informed that the monthly demand quota was fixed as 840 KVA with effect from 03-01-2010. The Writ Petition No.1781 of 2010 was filed by the Petitioner before the Hon'ble High Court of Madras challenging the above order of the Superintending Engineer, Chengalpet Electricity Distribution Circle which was subsequently transferred to the Commission for disposal and the same was registered as M.P.No.15 of 2012.

7. Contentions of the Petitioner in M.P.No.15 of 2012 (in W.P.No.1781 of 2010 filed before the Hon'ble High Court of Madras):-

The Petitioner in M.P.No.15 of 2012 contended before the Hon'ble High Court of Madras in W.P.No.1781 of 2010 as follows:-

- (a) The impugned order dated 24-12-2009 issued by the Superintending Engineer, Chengalpattu Electricity Distribution Circle is illegal, arbitrary and without the authority of the law and it is against the orders of the Commission (impleaded as the First Respondent in the said Writ Petition) and it is hit by Article 14 of the Constitution of India.
- (b) The Superintending Engineer Chengalpattu Electricity Distribution Circle failed to note that using of wind energy cannot be a ground to withdraw the optimum

demand allowed to the Petitioner and that the withdrawal is against principles of natural justice and fair play.

8. Facts of the case of the Petitioner in M.P.No.20 of 2012:-

8.1. The Petitioner in M.P.No.20 of 2012 namely M/s.Sandfits Foundries (P) Ltd is a continuous process industry involved in steel and iron with H.T.S.C.No.125 (Coimbatore Electricity Distribution Circle (Metro)). The Petitioner was originally sanctioned with a maximum demand of 3625 KVA.

8.2. In the letter dated 30-01-2009 issued by the Superintending Engineer, Coimbatore Electricity Distribution Circle, Coimbatore clearly stated that the Petitioner was approved to avail continuous running of the industry for 25 days with a power holiday of 5 days. Further, the Petitioner was also exempted from evening peak hour restrictions between 6.00 p.m. to 10.00 p.m. to run their industry continuously with optimum demand fixed by the Respondent as per clause 1 (n) of memo dated 01-11-2008 issued by the headquarters of TNEB.

8.3. In letter dated 04-02-2010, the Superintending Engineer Coimbatore Electricity Distribution Circle (Metro) had cancelled the peak hour restriction exemption since the Petitioner is owning wind mills for their captive consumption. The above letter dated 04-02-2010 was challenged in W.P. No.4638 of 2010 which was subsequently transferred to the Commission for final disposal by the Hon'ble High Court of Madras.

9. Contentions of the Petitioner in M.P.No.20 of 2012 (in W.P.No.4638 of 2010 filed by the Petitioner before the Hon'ble High Court of Madras):-

The contention of the Petitioner in the above said Writ Petition No.4638 of 2010 is as follows:-

9.1. The impugned letter dated 04-02-2010 issued by the Superintending Engineer, Coimbatore Electricity Distribution Circle (Metro) is illegal, arbitrary and without authority of law and it is against the orders of the Commission.

9.2. There is no provision of law for withdrawing the optimum demand scheme or imposing peak hour restriction to a continuous process industry of the Petitioner for the reason that they own wind energy generators for their captive consumption.

9.3. The Superintending Engineer, Coimbatore Electricity Distribution Circle (Metro) has no authority of law to withdraw the optimum demand of the Petitioner's industry without the prior approval of the Commission (impleaded as the First Respondent in the Writ Petition) which is the competent authority under the Electricity Act, 2003.

9.4. The impugned action of the Superintending Engineer, Coimbatore Electricity Distribution Circle (Metro) consequential to the memo dated 24-01-2010 issued by the TNEB is null and void in view of the fact that the memo dated 28-01-2010 issued by the TNEB relying upon their earlier memos dated 19-12-2008, 04-08-2009 and 21-08-2009 are struck down by the Tamil Nadu Electricity Regulatory Commission vide para 13 of its order dated 28-10-2009.

7. Hearing held on 21-05-2012 with reference to M.P.No.15 of 2012:-

In the hearing held on 21-05-2012 with reference to M.P.No.15 of 2012, the Commission held as follows:-

“Thiru K.Jayachandran and Thiru M.A.Mudimannan, Advocates filed Vakalathnama for the Petitioner. Petition is admitted. The Respondents were directed to file counter within four weeks”

8. Hearing held on 31-07-2012 with reference to M.P.No.20 of 2012:-

In the hearing held on 31-07-2012, the Commission held as follows:-

“Counsel for both side were present. This Petition is transferred from Hon’ble High Court of Madras. Petition is admitted and TANGEDCO is directed to file the counter within two weeks’ time”.

9. Hearing held on 26-09-2012 with reference to both the above M.P.Nos.15 and 20 of 2012:-

In the hearing held on 26-09-2012 with reference to both the above M.P.Nos.15 and 20 of 2012, the Commission held as follows:-

“The counters filed by TANGEDCO pray for dismissal of the petition filed in the Commission in this regard. The learned Counsel for TANGEDCO, during the hearing states that both the petition be disposed of in the light of orders of the Hon’ble High Court of Madras dated 29-06-2012. Orders reserved”.

10. Findings of the Commission with reference to both the above M.P.Nos.15 and 20 of 2012:-

10.1. M.P No. 15 of 2012 is the writ petition filed by M/s. Goyal Ispat Ltd., in the Hon'ble High Court of Madras and numbered as W.P No.1781 of 2010.

10.2. M.P No. 20 of 2012 is the writ petition No. 4638 of 2010 filed by M/s.Sandfits Foundries (P) Ltd., Coimbatore and transferred to this Commission.

10.3. The prayer in Writ Petition No.1781 of 2010 filed by M/s.Goyal Ispat Ltd was to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records of the third Respondent in the said Writ Petition namely, the Superintending Engineer, Chengalpattu Electricity Distribution Circle in Lr. No. SE/CEDC/CGL/AEE/Gen/CJD/ F.R&CD434/09 dated 24.12.2009 and QUASH the same as illegal, arbitrary and without authority of law and consequently direct the said Third Respondent in the said Writ Petition to permit the petitioner industry in HTSc.No.187 to avail the optimum demand of 1050 K.V.A. as allowed in letter dated 19-6-2009 issued by the Superintending Engineer, Chengalpattu Electricity Distribution Circle.

10.4. The prayer in writ petition No. 4638 of 2010 filed by M/s. Sandfits Foundries (P) Ltd. is for issue of a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records of the Third Respondent in the said Writ Petition namely, the Superintending Engineer, Coimbatore Electricity Distribution Circle (Metro) in Lr. No. SE/CEDC/M/DFC/AO/R/HT/R&C/ F.Cont.Process Ind/10 dated 22-9-2009 issued by the said Respondent and the consequential re-fixation of quota as set out in the impugned letter in Lr. No. SE/CEDC/M/DFC/AO/R/HT/R&C/F.Cont.Process Ind/10

dated 4-2-2010 and QUASH the same as illegal, arbitrary, without authority of law and consequently direct the said 3rd Respondent to permit the petitioner to run their industry continuously in optimum demand with restricted power holidays without evening peak hour restrictions as permitted in clause I (n) of memo dated 1-11-2008 issued by the 2nd Respondent in the said Writ Petition namely the Chairman, TNEB.

10.5. Since these two petitions were involving issues of identical nature they were taken up for final hearing on 26-9-2012. In MP No. 15 of 2012 the counter was due on 19-6-2012. In MP No. 20 of 2012 the counter was due on 14-8-2012. The counters were filed after a delay of 3 months and 1 month respectively in these two cases. Even at the time of admission of these petitions, the Order dated 29-6-2012 issued by the Hon'ble High Court of Madras with regard to optimum demand concept was referred to. However, the counters filed by the TANGEDCO pray for dismissal of these two petitions. During the hearing on 26-9-2012, Learned Counsel for TANGEDCO stated that both these petitions be disposed of in the light of Orders of the Hon'ble High Court of Madras dated 29-6-2012.

10.6. It is necessary to recapitulate the developments in this matter. Certain petitions were filed before the Hon'ble High Court of Madras which were transferred to this Commission for final disposal. These petitions were numbered as TA No. 1 to TA. No.9 by this Commission. Orders on these petitions TA Nos 1 to 9 were passed by this Commission on 28-12-2011. The transferred writ petitions in this case deal with issues which are similar to the issues raised in TA Nos. 1 to 9. The Respondent TANGEDCO however took a view that the Orders passed by the TNERC in TA Nos 1 to 9 can be applied only in those cases and cannot be treated as general Orders

whereby the benefits of the Orders contained in TA Nos 1 to 9 cannot be passed on to the Writ Petitioners whose applications are now before the Commission. This matter was also before the Hon'ble High Court of Madras in writ petition No. 14264 of 2012 and MP No. 1 and 2 of 2012 filed by M/s.Sanmar Ferrotech Ltd wherein Chairman, TNEB and SE/CEDC/North, TNEB, Chennai were also parties besides the Commission. In this particular case the Hon'ble High Court of Madras passed an Order on 29th June 2012. Para 17 of this Order is relevant to the instant case and therefore extracted below:-

“Since the Commission does not deal with the claims of individual persons but interprets the Circular/Memo issued by the Respondent Board under section 86(1)(f) of the Act, the question of applicability to the Commission’s order to 9 persons covered by the order dated 28.12.2011 is totally based on a misconception of the Commission’s order and the Electricity Act. The Commission clearly holds that the Circular Memo dated 31-8-2009 is discriminatory as a consequence it applies to all similarly placed. In view of the above finding, utilising the wind energy from captive generation or purchased from third party source cannot be a ground to deny the benefit of Optimum Demand Concept as provided under Memo dated 1.11.2008. The order of the Commission is applicable to all similarly placed HT consumers without discrimination. The reason given by the authority in the impugned proceedings stating that the order will be applicable only to those HT consumers who have approached the Commission is based on a misconception”

10.7. Since the Chairman, TNEB is a party in this matter, this Order would clearly apply to all the consumers. On a specific query from the Commission as to whether any appeal has been preferred against this Order, it was confirmed by TANGEDCO that no appeal has been filed. That being so, the Order dated 29-6-2012 of the Hon'ble High Court of Madras, as referred above, will have to be implemented and accordingly the prayers in their counters to dismiss the cases is not correct. When this issue was raised by the Commission at the time of hearing on 26-9-2012, the

Learned Counsel for TANGEDCO stated that both these petitions could be disposed of in the light of Orders of the Hon'ble High Court of Madras dated 29-6-2012.

10.8. The Commission therefore orders that in view of the Orders of the Hon'ble High Court of Madras dated 29-6-2012 in Writ Petition No.14264 of 2012 as extracted above, the benefit of optimum demand concept as provided under Memo dated 1-11-2008 will have to be extended to these two writ petitioners as well. In view of the above, the impugned letter dated 24-12-2009 referred in para 10.3 and impugned letters dated 22-9-2009 and 4-2-2010 referred in para 10.4. are set aside.

11. Appeal:-

An appeal against this Order lies before the Appellate Tribunal for Electricity under section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission