

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.21 of 2012

Tamil Nadu Electricity Consumers' Association
Represented by its President
1st Floor, SIEMA Building, P.B.No.3847
8/4, Race Course, Coimbatore – 641 018.

..... Petitioner
(Thiru N.L.Rajah,
Advocate for Petitioner)

Vs.

Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Represented by its Chairman and Managing Director
144, Anna Salai, Chennai – 600 002.

..... Respondent
(Thiru P.H.Vinod Pandian
Advocate for Respondent)

Dates of hearing : 31-07-2012 and 28-11-2012

Date of order : 18-12-2012

The above M.P.No.21 of 2012 came up for final hearing before the Commission on 28-11-2012. The Commission upon perusing the above petition and the connected records and after hearing both sides passes the following order:-

ORDER

1. Prayer of the Petitioner in M.P.No.21 of 2012:-

The prayer of the Petitioner in M.P.No.21 of 2012 is to direct the Respondent, their men, agents, representatives, assigns, servants and / or anyone acting under

them or claiming through them, to permit the Petitioner's members who are optimum demand consumers to run their industries continuously in optimum demand concept with restricted working days and power holidays without evening peak hour restrictions vide the Clause I (n) of the Memo No.CE/Comml/EE/DSM/F.Power cu/D.001/2008, dated 01-11-2008 issued by the Respondent.

2. Facts of the case:-

(a) The Petitioner is an Association of electricity consumers in the State of Tamil Nadu. The Appellant had earlier filed petitions before various fora on issues relating to the rights of its members in the electricity sector. There are 579 members as on date.

(b) Several of the members of the Petitioner who are optimum demand consumers are aggrieved by the stand of the Respondent that "*Optimum demand concept is applicable for those consumers availing Boards power only*". The Petitioner has therefore filed this application, on behalf of its members, for appropriate directions.

3. Contentions of the Petitioner as set out in M.P.No.21 of 2012 :-

(a) Clause 1 (n) of the Memo dated 01-11-2008 of the Respondent stated that optimum demand as may be required to operate the HT industries is being fixed in the case of continuous process industries and other HT industries based on representation of the consumers. Such industries had been requested by TANGEDCO (then TNEB) to work for restricted number of days in a month and not to run the industries for the balance days. The Petitioner states that its members who were continuous process industries were also permitted to run on this basis.

(b) The Respondent suddenly issued the Memo dated 31-08-2009, wherein in Clause 5 it was stipulated "*Optimum demand concept is applicable for those consumers availing Boards power only*". There was nothing in the order dated 28-11-2008 that permitted the Respondent to make such discrimination. The Respondent has also not been able to establish the basis on which such discrimination was sought to be made. The Petitioner states that what the Respondent sought to do is plainly a restriction and control measures which has not received the assent of this Commission and hence invalid in law. The Respondent's officers also raised illegal demands.

(c) Such discrimination is arbitrary, unreasonable and consequently unconstitutional. The policy behind the Electricity Act, 2003 is that there must be no discrimination between various classes of consumers. If optimum demand facility is granted to consumers who draw power from the Respondent, but if such facility is denied to those who draw power from Wind Mills / Captive Power Plants, it would result in hostile discrimination and is consequently unconstitutional and illegal. Such discrimination would also be unreasonable and arbitrary.

(d) Some of the HT consumers had challenged the Respondent's Memo dated 31-08-2009 before the Hon'ble High Court, Madras, as the same was arbitrary, unreasonable and unconstitutional. Some of the consumers had also challenged the demand notices issued to them. The Hon'ble High Court, Madras transferred several such Writ Petitions to this Hon'ble Commission and directed this Hon'ble Commission to pass appropriate orders in accordance with law. The Respondent had given an undertaking before the Hon'ble High Court, Madras to continue the

optimum demand concept till the time this Hon'ble Commission passes appropriate orders.

(e) This Commission had passed a detailed order on 28-12-2011. Such order dated 28-12-2011 passed by this Commission will have to be applicable to all optimum demand consumers. The officers of the Respondent have informed the Petitioner's members that the directions in the order dated 28-12-2011 are applicable only for the Petitioners in the said T.A.Nos. 1 to 9 of 2011 and not for all optimum demand consumers.

(f) The Petitioner's members stand on the same footing as those HT consumers who are covered under the order dated 28-12-2011 passed in T.A.Nos.1 of 9 of 2011. The Petitioner therefore respectfully prays that a similar order may be passed in this petition also.

4. Counter affidavit filed by the Respondent :-

In the counter affidavit filed by the Respondent, the following contentions are made by the Respondent:-

(a) The Petitioner being a corporate entity, it is not entitled to represent the cause of any other person including its alleged members, and as such the alleged resolution, dated 10-05-2012 has no sanctity in law.

(b) Even otherwise, every HT consumer, whether owing allegiance to the Petitioner or otherwise, is covered by necessary individual agreement entered into with the TANGEDCO and as such the Petitioner has no locus standi to agitate on

behalf of its alleged members. Further such universal order cannot be pleaded particularly with regard to the Grid Capacity and power situation.

(c) In any case, the Petitioner is not entitled to approach the Commission under the said provisions to redress the grievance / complaint / disputes relating to individual consumer(s) as has been held by the Supreme Court of India in Maharashtra State Electricity Distribution Company Limited Vs. Lloyds Steel Industries Limited, AIR 2008 SC 1042.

(d) Allowing the prayer of the Petitioner's Association would amount to Circumvent the Restrictions & Control measures itself.

(e) It is true that as per the Memo dated 01-11-2008 continuous process industries and to those industries which could not operate with the 40% power cut, were permitted to operate their industry with the optimum demand required by them. The concession was subject to the condition that the power supply being made available was only for such restricted specified period depending upon the nature of process of the industry so as to keep with the overall capacity of the grid. The Chief Engineers / Distribution concerned were to fix such optimum / minimum demand as required by the industry.

(f) In communication dated 01-11-2008 it was not mentioned that optimum demand concept was available to all consumers and its withdrawal to all consumers was not mentioned in Memo dated 31-08-2009. All other services under continuous process throughout the State had availed the Optimum Demand facility and operated

in the right perspective. It is only for the nine industries that were permitted with the optimum demand facility along with other sources of supply as per direction in T.A.Nos.1 to 9 of 2011 dated 28-12-2011.

(g) Based on the orders of this Commission dated 28-10-2009, the wind energy consumers with wheeling arrangement are being permitted higher demand during normal hours and during peak hours. The consumers request for enjoying the provisions in both deemed demand concept and optimum demand concept is not justifiable.

(h) The benefit of optimum demand with TANGEDCO supply as well as additional demand from other sources would lead to disparity with consumers running with quota demand and wheeling arrangement. The optimum demand consumers were permitted to run their industries with wheeling arrangement during restricted holidays up to the level of sanctioned demand. The optimum demand facility, if extended to all consumers would render fixation of quota demand during various levels of power cut meaningless and affect the stability of the grid. Particularly the grid management during peak hours shall be a problem to TANGEDCO, since all the continuous process industries shall draw power during peak hours which in turn leads to TANGEDCO to impose unscheduled load shedding during peak hours and this may cause inconvenience to the common public and the public may agitate. It is also relevant to submit that the rate of power during peak hours in the market is always high and there is also restrictions imposed by this Commission to purchase high cost powers in the tariff order, dated 30-03-2012.

5. Hearing held on 28-11-2012:-

In the hearing held on 28-11-2012, the Commission held as follows:-

“No one appeared for the Petitioner. TANGEDCO, the Respondent clarified that this petition can be disposed of in line with the orders of the Commission in T.A.No.1 to 9 of 2011 and other two similar petitions as well as the orders of the High Court of Madras. Orders reserved”.

6. Finding of the Commission:-

(a) M.P. No. 21 of 2012 was filed by Tamil Nadu Electricity Consumers Association on 27th June 2012 with the following prayer.

“To direct the Respondent, their men, agents, representatives, assigns, servants and/or anyone acting under them or claiming through them, to permit the Petitioner’s members who are optimum demand consumers to run their industries continuously in optimum demand concept with restricted working days and power holidays without evening peak hour restrictions vide the Clause I (n) of the Memo No.CE/Comm/EE/DSM/F.Power Cut/D.001/2008 dated 01.11.2008 issued by the Respondent and as approved by this Hon’ble Commission in its Order dated 28.11.2008 passed in M.P.No. 42 of 2008 and render justice”.

(b) IA No. 1 of 2012 in MP No. 21 of 2012 was also filed for interim injunction.

This matter was taken up for argument on 28-11-2012. None from the petitioner’s side was present during the hearing. The Learned Counsel for the Respondent stated that this matter can be disposed of in line with the Commission’s order in MP No. 15 of 2012, MP No. 20 of 2012 and TA Nos 1 to 9 of 2011, all though the position taken by them in the counter affidavit was different.

(c) The finding of the Commission dated 16-11-2012 in MP Nos 15 and 20 of 2012 are extracted below:-

“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 KVA. 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”.

(d) Some more orders have also been passed by the Hon'ble High Court of Madras allowing similar relief to other petitioners who were treated as continuous process industry and therefore optimum demand concept was allowed to them.

(e) In the light of the above, IA No. 1 of 2012 in MP No. 21 of 2012 and MP No. 21 of 2012 is disposed of with the direction that the optimum demand concept shall be extended to the petitioner as well, as per the circular Memo dated 1-11-2008 issued by TNEB/TANGEDCO and approved by the Commission in its order dated 28-11-2008 passed in MP No. 42 of 2008.

7. 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