

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**

S.M.P. No.1 of 2012

Thiru S.Sekkizhar
Director Finance
(former Chief Finance Controller (Revenue))
TANTRANSCO
No.144, Anna Salai
Chennai – 600 002.

..... **Petitioner**
(Party-in-Person)

Vs

Nil

... **Respondent**

Date of hearing : 17-04-2012

Date of order : 02-05-2012

The above S.M.P.No.1 of 2012 came up for final hearing before the Commission on 17-04-2012. The Commission after perusing the connected records and after hearing Thiru S.Sekkizhar, the then Chief Financial Controller (now Director (Revenue), TANGEDCO passes the following order:-

ORDER

1. Observations of the Commission in the Common Order dated 28-12-2011 in M.P. No. 32 of 2010 and M.P. No.41 of 2010

In the order dated 28-12-2011 in M.P. Nos.32 and 41 of 2010 at paragraph 14.12, it has been observed by the Commission as follows:-

“14.12. The TNEB has usurped the authority of the Commission in clarifying a matter arising from previous orders of the Commission. The CFC Revenue deserves to be proceeded under Section 142 of the Electricity Act for issuing the clarification in circular dated 25-06-2010. A show cause notice may be issued to him”.

2. Issue of Show Cause Notice D.No.105/2012 dated 18-01-2012 to Thiru S.Sekkizhar, Director (Finance) then Chief Financial Controller (Revenue):-

Pursuant to the observation of the Commission referred to in para 1 above a Show Cause Notice was issued to the Secretary TANGEDCO who was directed to serve it to the Chief Financial Controller (Revenue) (Thiru S.Sekkizhar) and send a proof of service. In the said Show Cause Notice, it was inter-alia observed by the Commission as follows:-

“5. AND WHEREAS Commission in its order dated 28-11-2008 in M.P. No.42 of 2008, inter alia arrived at the basis of computation of quota for wind energy generators on the basis of material available i.e memo dated 17-11-2008 of TNEB which reads as follows:

Fixing of energy quota

- | | |
|--|----------------|
| <i>(i) Monthly base energy consumption as illustrated in working instructions dated 1.11.2008</i> | <i>A</i> |
| <i>(ii) In that the actual energy supplied (monthly average) for the above three months average by CPP</i> | <i>B</i> |
| <i>(iii) The actual energy availed by consumer from TNEB</i> | <i>A-B = C</i> |
| <i>(iv) 60% energy on C (c x 60/100)</i> | <i>D</i> |
| <i>(v) The quota fixed for energy</i> | <i>B + D:</i> |

6. *AND WHEREAS the Chief Financial Controller/Revenue of erstwhile Tamil Nadu Electricity Board (which is presently TANGEDCO) in the reference first cited above clarified that the expression “actual energy supplied” occurring in the above method of computation was meant only the actual units adjusted.*

7. *AND WHEREAS the said communication of the said Chief Financial Controller/Revenue was stayed by the Commission in the orders second and third cited above as it was issued without the prior approval of the Commission*

8. *AND WHEREAS Miscellaneous Petitions were filed by Indian Wind Power Association and Southern India Mills Association in MP No. 32 and M.P. No.41 of 2010 praying the Commission to punish Tamil Nadu Electricity Board and Chief Financial Controller/Revenue, TNEB for having issued a communication dated 25-6-2010 in violation of the directions of the Commission in M.P.No.42 of 2008 dated 28-11-2008 and order dated 28-10-2009 in Suo Motu Proceedings No. 1 of 2009.*

9. *AND WHEREAS the Commission, on being satisfied that there is a prima facie case for initiating proceedings under sections 142 and 146 of the Electricity Act 2003 in the instant case, held in its order dated 28-12-2011 in M.P No. 32 of 2010 and M.P No. 41 of 2010 that TNEB (presently TANGEDCO) usurped the authority of the Commission in clarifying a matter arising out of the previous order of the Commission and therefore, the Chief Financial Controller/Revenue, TNEB who issued the clarificatory circular dated 25-6-2010 deserved to be proceeded with*

under section 142 of the Electricity Act, 2003 and further directed that show cause notice may be issued to him;

10. AND WHEREAS the communication of the said Chief Financial Controller/Revenue, TNEB (presently TANGEDCO) in the reference first cited caused confusion among the field officers of TANGEDCO, in that, in a specific case relating to M/s Velatal Spinning Mills P. Ltd, Tiruchengode, the Superintending Engineer, Mettur (Chairperson CGRF, Mettur) disposed of grievance placing reliance on the clarificatory circular issued by the Chief Financial Controller unmindful of the orders of the Commission in force which would not have occasioned had the Chief Financial Controller sought the approval of the Commission beforehand”;

3. Reply given by Thiru S.Sekkizhar to the Show Cause Notice:-

In letter D.No.65/12 dated 03-02-2012, Thiru S.Sekkizhar, the then Chief Financial Controller (Revenue) (now Director (Finance), TANTRANSCO) has furnished his reply to the above show cause notice. Thiru S.Sekkizhar in his reply has stated as follows:-

“2. In the first instance, I would like to tender my unconditional apology before the Hon’ble Commission, if in any case, the Hon’ble Commission has come to a final conclusion that the undersigned by issuing the impugned letter, dated 25-06-2010 has interfered with the authority of the August Commission. I would like to humbly submit that myself and our organization have much respect to this Hon’ble Commission and at no point of time intended to violate or interfere with the powers and authority of the Hon’ble Commission.

3. *I respectfully submit that while issuing the impugned letter, dated 25-06-2010, I was under bonafide impression that the field officers of the Circles more particularly the personnel in lower level clerical cadre (generally having minimum general educational qualification of a pass in SSLC), who have been entrusted with the responsibility of applying the orders of this Hon'ble Commission on day-to-day basis, should be made known the orders of the Hon'ble Commission in very simple terms so as to enable them to understand and to apply the same in its letter and spirit. Except the above intention, I have no other intention much less any willful or wanton intention in issuing the impugned letter. Even though I have acted bonafidely as stated above, I still would like to place on record my deep regret for my unintended action in having issued the impugned letter with such expression which is found objectionable by this Hon'ble Commission. Further, I would like to submit that much more care and diligence will also be shown so as to avoid such occurrence in future.*

4. *In view of above and as the Hon'ble Commission was also pleased to uphold otherwise the contents of the impugned letter, dated 25-06-2010 and consequently pleased to vacate the interim stay granted in M.P. No. 32 of 2010 and in M.P. No.41 of 2010, I would like to request the Hon'ble Commission to purge me out of the contempt proceedings initiated".*

4. Hearing held on 17-04-2012 in regard to the above S.M.P. No. 1 of 2012:-

A final hearing in respect to the above S.M.P. No. 1 of 2012 was held on 17-04-2012 and Thiru S.Sekkizhar was present. He reiterated the contents of his reply made in his letter dated 03-02-2012.

5. Findings of the Commission:-

5.1. Thiru S.Sekkizhar in his reply in para 3 of his letter dated 03-02-2012 has stated as follows:-

“3. I respectfully submit that while issuing the impugned letter, dated 25-06-2010, I was under bonafide impression that the field officers of the Circles more particularly the personnel in lower level clerical cadre (generally having minimum general educational qualification of a pass in SSLC), who have been entrusted with the responsibility of applying the orders of this Hon’ble Commission on day-to-day basis, should be made known the orders of the Hon’ble Commission in very simple terms so as to enable them to understand and to apply the same in its letter and spirit. Except the above intention, I have no other intention much less any willful or wanton intention in issuing the impugned letter. Even though I have acted bonafidely as stated above, I still would like to place on record my deep regret for my unintended action in having issued the impugned letter with such expression which is found objectionable by this Hon’ble Commission. Further, I would like to submit that much more care and diligence will also be shown so as to avoid such occurrence in future”.

5.2. The above statement proceeds on the assumption that the orders of the Commission are not in very simple terms. Even assuming that the orders of the Commission are not in simple terms, the proper course of action is to approach the Commission by way of a clarification petition for clarifying the orders of the Commission or a Review Petition as contemplated in Clause 43 of Tamil Nadu Electricity Regulatory Commission-Conduct of Business Regulations, 2004.

5.3. The Commission is of the view that the procedure as laid down in the Act / Regulations should be fully complied with and such practices should be completely avoided in future. As a special case the clarification and the apology tendered are accepted and the proceedings are closed. A copy of this order may be forwarded to the Chairman and Managing Director, TANGEDCO and the Chairman, TANTRANSCO for advising all concerned to take note of the directions of the Commission for future actions.

6. 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

/True Copy/

Secretary
Tamil Nadu Electricity
Regulatory Commission