

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.27 of 2012

Orchid Chemicals & Pharmaceuticals Limited,
"Orchid Towers", 313,
Valluvarkottam High Road,
Nungambakkam, Chennai – 600 018 repd..by its
Senior General Manager-Legal and Company
Secretary Mrs. Bhoomijha Murali

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

Vs.

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

2. The Superintending Engineer,
Chennai Electricity Distribution Circle / South
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)

..... **Respondents**
(Thiru P.H.Vinod Pandian,
Standing Counsel for Respondents)

**Dates of hearing : 18-10-2012, 28-11-2012 and
30-01-2013**

Date of Order : 04-06-2013

MP No. 27 of 2012 was filed by M/s. Orchid Chemicals and Pharmaceuticals Limited, Chennai with a prayer to set aside the impugned order of the respondent vide its letter No. SE/CEDC/S/DFC/AAO/HT/AS/AS3/F.HT 402/D.278/12 dated 17-4-2012 as illegal, arbitrary, without the authority of law, and against the Tariff Order TP No. 1 of 2012 dated 30-3-2012 issued by the Tamil Nadu Electricity Regulatory Commission and consequently direct the respondent to extend the benefit of tariff change from Tariff III to Tariff II A.

2. The petitioner has also filed an interim application No. 1 of 2012 in the same MP No. 27 of 2012 with a prayer for interim stay of the operation and all further proceedings of the impugned demand notice dated 17-4-2012, issued by the second Respondent.

Contentions of the petitioner:

3. The petitioner has obtained the initial electricity supply during 1997 with a sanctioned load of 300 KVA in HT S.C.No.402 and subsequently with the expansion of activities sought additional load from time to time and currently has a sanctioned load of 1800 KVA. The issues relating to the period 1997 to the issue of tariff order for the year 2012 – 13 do not have much relevance with regard to the present petition although listed out by the petitioner. However, the petitioner has submitted that initially when he availed the supply in 1997 he was charged commercial tariff under Tariff III and he has been representing against this for quiet some time. This issue was finally decided in his favour during September 2003 when the tariff was changed from Tariff III to Tariff II A.

4. The matter was then taken up by the petitioner with the Ombudsman and the Ombudsman vide his Order dated 28-3-2006 held that the petitioner should be charged under the tariff applicable to HT industrial service for the disputed tariff period from 28-8-1998 to 19-6-2003. The petitioner also stated in his petition that from September 2003 till 30-3-2012 the petitioner's R & D activities has been charged under HT Tariff II A without any difficulties.

5. The present issue arose with effect from 1-4-2012 when the impugned letter was issued by the respondent on 17-4-2012 seeking to bill the petitioner under HT Tariff III instead of HT Tariff II A with peak hour restrictions from 1-4-2012 onwards along with R & C measures applicable to HT Tariff III. The petitioner has extracted the operative portion of the new Tariff Order No. 1 dated 30-3-2012 issued by this Commission as below:-

"10.4 High Tension Tariff II-A

<i>Tariff category</i>	<i>Tariff</i>	
	<i>Demand Charge in Rs/KVA/month</i>	<i>Energy charge in Paise per kWh (Unit)</i>
<i>High Tension Tariff II A</i>	<i>300</i>	<i>450</i>

10.4.1 This tariff is applicable for the following services under the control of Central/State Governments /local bodies/TWAD Board/CMWSSB:

- 1. Educational institutions including government aided educational institutions and Hostels run by such educational institutions, Hospitals, Veterinary Hospitals, Leprosy Sub-Centres, Primary Health Centres and Health Sub-Centres, Orphanages, Public Libraries, Public Water works and sewerage works, Public Lighting, Residential colonies and Housing complexes, Senior citizens communities, Electric crematorium, Research Laboratories and institutions, Ministry of Defence and Avadi CRPF establishment, Dairy units , Hospitals and Rehabilitation centres*

run by charitable trusts which offers totally free treatment for all categories of patients on par with government hospitals, Desalination plants and Art Galleries.

2. *Desalination plant at Kudankulam nuclear power plant and Minjur Desalination plant of Chennai water Desalination Ltd.*
3. *Single point supply to Co-operative group housing society as specified in the Electricity Eighth Order 2005.*
4. *Actual places of public worship.”*

6. The petitioner heavily relies on this order in his pleadings and stated that there can be no doubt that petitioner's research laboratories come under HT Tariff II A. The petitioner has also submitted that without the recognition of the petitioner's in-House R & D unit by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India the petitioner could not run the research laboratories. The petitioner therefore contends that his research laboratory comes under the control of the Central Government and hence it should be billed under HT Tariff II-A. The petitioner also is of the view that the respondent has misconceived the order of the Commission dated 30th March 2012 and the impugned order should be set aside on the ground of non-application of mind. The petitioner has also brought out his reporting relationship with the Department of Scientific and Industrial Research, Government of India to buttress his arguments that they are under the control of the Central Government and hence they should be billed under HT II A. The petitioner further states that they have taken up the issue with the Consumer Grievance Redressal Forum through their representation dated 5-4-2012 and the Forum was pleased to pass an Order on 10-7-2012 observing that the issue is of policy matter and therefore cannot be decided by the CGRF.

7. The petitioner also submits that his R & D Centre is run with a non-profit motive to cater the need of research and development in the health care sector. He also states that there are no production activities involved and it is a pure research centre under the control of the Government of India. In the light of the above arguments the petitioner contends that he has to be charged only under HT Tariff II A and not under HT Tariff III.

Counter by the Respondents:-

8. The respondents also rely on para 10.4.1 of the said Tariff Order as relied upon by the petitioner. This para of the Tariff Order has already been extracted in the petitioner's submission in para 5 above. The respondent submits that the petitioner's research laboratory is not covered by para 10.4.1 of the Commission's Order inasmuch as the petitioner's laboratory is not under the control of Central/ State Governments/Local bodies / TWAD Board / CMWSSB. The petitioner has submitted that as per this tariff order referred above HT Tariff II A can be extended to the research institutions which are under the control of Central/ State Governments/Local bodies / TWAD Board / CMWSSB. It cannot be extended to the research institutions under the control of private organization and private corporate bodies like the petitioner, since the petitioner's research institute is only recognized by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India. Such mere recognition by the Government of India would not amount to ownership, by the Government of India. In view of the latest order of the Commission dated 30th March 2012, the petitioner's service connection was changed from HT Tariff II A

to HT Tariff III. It is also the contention of the respondent that the petitioner himself has stated in para 2 of the petition that the petitioner is a Public Limited company registered under the Company's Act, 1956. In view of this, they cannot be held to be under the control of Central/ State Governments/Local bodies / TWAD Board / CMWSSB and HT Tariff II A cannot be extended to the research institutions under the control of private organizations and private corporate bodies like the petitioner. In view of the above, the respondents have stated that HT Tariff III levied by them as per the tariff order dated 30-3-2012 is in order and valid.

9. Rejoinder by the petitioner:-

The rejoinder filed by the petitioner reiterates the earlier submissions made by the petitioner in his petition. The petitioner has also elaborated his reporting relationship with the Department of Scientific and Industrial Research and therefore pleaded that HT Tariff II A be extended to his laboratory instead of HT Tariff III.

10. Finding of the Commission:-

The above matter was heard on 30th January 2013. During the hearing the petitioner argued that the laboratory is a R & D institute recognized by the Central Government and funded by the Central Government since 1998 and the latest recognition issued by the Central Government is valid upto 2015. To a specific query from the Commission as to whether grant of recognition would amount to Government control, Learned Counsel for the petitioner stated that they can

never resort to commercial exploitation of their R & D activities. In response to the question of the Commission as to whether control would amount to ownership by Central, State Government or local bodies etc. the petitioner requested for consideration as a special case for charging the petitioner under Tariff II A. Seeking concession is a different issue and can be argued only prospectively during future tariff settings and cannot be invoked for re-classification. The existing order is to be interpreted as such for arriving at a conclusion. The petitioner argued that this benefit was given since 1998 and in 2003 when the tariff was changed they again represented and subsequently the tariff was restored to under HT Tariff II A. In view of this and the order of the Ombudsman order dated 28-03-2006 which held that the petitioner be charged under tariff applicable to HT Industrial service, they have again requested for charging them under HT II A instead of HT III. To a specific query from the Commission with regard to the investment by the Central Government, it was stated that they received some loan in the initial stages and as far as the revenue expenses are concerned the same are met only by the institute. From the above, it is clear that the petitioner is a private organization recognized by the Central Government. A recognition by the Central Government will not amount to ownership or control by the said Government. Recognition so granted may be coupled with conditions which are relatable only to the recognition granted. In fact the same recognition when it deals with taxes etc, leaves those issues to be decided in accordance with the relevant laws in these fields. An interpretation of the Commission's order as contained in para 10.4.1 of the said Tariff Order which is applicable to the services under the control of Central/ State Governments/Local bodies / TWAD

Board / CMWSSB will not qualify the petitioner for Tariff HT II A. The petitioner would only fall under HT Tariff III, as argued by the respondent. Accordingly, the Commission holds that the petitioner would actually fall under HT Tariff III which is being correctly charged. In the light of the above, the petition is dismissed.

11. 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 from the date of receipt of a copy of this order by the aggrieved person.

Ordered accordingly.

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission