

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.33 of 2012

Dharmapuri Paper Mills Private Limited
No.96/140, Luz Church Road
Mylapore
Chennai – 600 004.

.. **Petitioner**
(Thiru Rahul Balaji and 3 others
Advocates for Petitioner)

Vs

1. Director, Distribution
Tamil Nadu Generation and Distribution
Corporation Limited.
144, Anna Salai
Chennai – 600 002.
2. Chief Engineer – Commercial
TANGEDCO Ltd.
144, Anna Salai
Chennai – 600 002.
3. Chief Engineer – Distribution
TANGEDCO Ltd.
Vellore.
4. The Superintending Engineer
TANGEDCO
Dharmapuri Electricity Distribution Circle
Dharmapuri.

.... Respondents
(Thiru P.H.Vinodh Pandian
(Standing Counsel for Respondents)

Dates of hearing : **18-10-2012, 27-11-2012, 18-12-2012 and
20-12-2012**

Date of order : **11-07-2013**

The above M.P.No.33 of 2012 came up for final hearing before the Commission on 20-12-2012. 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.33 of 2012:-

The prayer of the Petitioner in M.P.No.33 of 2012 is to issue a direction to the respondents to provide the petitioner with uninterrupted power supply during the sanctioned working days without any unscheduled load shedding or power cuts.

2. Facts of the case:-

a. The petitioner is involved in the manufacture of kraft paper, more particularly paper board. The petitioner's production unit is situate in K.Echambadi Kelavalli Village, Harur Taluk, Dharmapuri and was established in the year 1989.

b. In view of the fact that the petitioner's manufacturing plant was situate in a remote area and was one of the first industries in the vicinity, the petitioner had applied for and obtained a 11 KV dedicated feeder line from the Dottampatti substation (33 KV) in the year 1989 after compliance with all necessary requirements towards the same.

c. As part and parcel of such R & C measures, the TNEB had imposed 40% power cuts and had also introduced the concept of evening peak hour restrictions wherein High Tension consumers such as industrial units were required to cut down their power consumption during the peak hours in the evening i.e. between 6 pm and 10 pm to 10% of their normal consumption.

d. The R & C measures introduced by the TNEB were set out in a memo dated 01-11-2008. TNEB had granted some concessions to continuous process industries in the said memo and the list of continuous process industries was set out in an annexure to the said memo. The petitioner submits that paper manufacturing industry is one of the categories of industry listed as continuous process in the said memo.

e. One of the schemes introduced as part of the R & C measures in M.P.No.42 of 2008 was the optimum demand / power holiday scheme. This was introduced with a particular view to aiding continuous process industries which by virtue of their manufacturing process could not be subjected to the normal power cuts as it would completely derail production.

f. Being a continuous process industry, the petitioner had been operating under the optimum demand / power holiday scheme with power holiday of 5 days in a month from 2008 onwards. While so, the petitioner submits that the TNEB / TANGEDCO had sought to issue fresh R & C measures in the month of February 2012 by imposing a 40% power cut in addition to the load shedding which was already being implemented, and has also sought to impose power holidays for a period of 8 days every month.

g. As per the refixed quota, the petitioner was given power holidays of 17 days from 14th to 30th of every month.

h. The petitioner had given representations to the respondent and has also issued reminders dated 02-06-2012 and 06-06-2012 seeking refixation of the power

holiday period. The petitioner in its representation had sought the reduction of power holidays from the 17 days period and has also sought the splitting of the power holidays into two periods spread across the month as the same would enable better labour management for the petitioner.

i. The 3rd respondent in its letter dated 15-06-2012 reduced the power holidays to 13 days and also permitted the same to be implemented in a staggered manner in two tranches spread across the month.

j. The new schedule of power holidays came into effect from July 2012. The above refixation of the quota and power holidays did not in any manner alleviate the situation of the petitioner as the respondent continues to impose unscheduled power cuts of nearly 8 hours every day. Hence the petitioner has filed the above petition.

3. Contention of the Petitioner as set out in the Petition:-

a. The production process of the petitioner is such that once the boiler is loaded with raw material it has to be continuously operated. Any reason leading to switching off the boiler could lead to wastage of the entire batch of raw material in all sections in the process. The unscheduled power cuts imposed by the respondents have led to a situation wherein the petitioner is forced to shut down its boiler and the entire machine operations during the power cuts leads to immense losses.

b. The petitioner has been granted a separate feeder line as far back as the year 1989 and therefore it would not be difficult or infeasible to ensure a steady and uninterrupted supply to the petitioner on grounds of lack of infrastructure.

c. As per the policy of the State of Tamil Nadu and also as per the regulations and orders of the Commission, continuous process industries are to be supplied uninterrupted power at all times except during the power holidays.

d. The conduct of the respondents in shutting of power for as much 8 hours on a daily basis completely defeats the optimum demand / power holiday scheme which was introduced with the specific objective of ensuring certain categories of industries from being subjected to the vagaries of power supply.

4. Contentions of the Respondent as set out in the counter:-

a. The averments of the petitioner in para 4 of the petition that it has obtained dedicated feeder line for its HT service is denied as false in as much as the feeder was laid on Board's cost and the feeder connects to another consumer also.

b. Due to shortage of power, R & C measures are implemented from November 2008 onwards by the respondents. It is further stated that based on the R & C measures implemented with the approval of the Commission, it is submitted that as of now the power cut is 40% besides peak hour restrictions.

c. The availing of optimum demand was introduced as per TNEB's Memo dated 01-11-2008 which reads as follows:-

“the continuous process industries are permitted to avail optimum demand without peak hour restriction with minimum 5 days power holiday in a month. The minimum 5 days are calculated as below as per Memo No.CE/Commercial/EE/DSM/AEE/PMM/F.Powercut/D.394/2009, dated 31-08-2009.

Peak hours / one day = 4 hours (6 pm to 10 pm)

Peak hour for one month = 30 x 4 = 120 hrs.

Minimum No. of power holidays 120 / 24 = 5 days

So peak hour exemption has been compensated with power holiday”.

d. The petitioner would come under the category of two days a week compulsory power holidays from 27-02-2012 onwards as per TANGEDCO Memo No.CE/Commercial/EE/DSM/F.Powercut/D.39/2012, dated 25-02-2012 in addition to power holiday under optimum demand concept. However, it has been withdrawn from 02-06-2012 vide Memo No.CE/Commercial/EE/R&C/AEE/F.Relaxation/D.248/2012, dated 01-06-2012.

e. The averments stated in para 10 are denied as false. The petitioner was permitted to avail power holidays in two spells as per the approval of the Chief Engineer / Distribution / Vellore in Memo No.CD/D/VLR/GL/F.HT/D.4296/2011, dated 12-03-2012 based on its request letters, dated 01-03-2012 and 08-03-2012 wherein it has agreed to the schedule of power holidays introduced in Memo dated 27-02-2012. The scheduled load shedding has been carried out for three hours only as per the instructions issued from time to time including Memo, dated 01-06-2012 but not carried out eight hours load shedding per day as alleged. The petitioner industry produced load shedding chart also for three hours only. The other interruptions occurred only due to monthly maintenance works and break downs. As per the instructions in Memo dated 01-11-2008, the petitioner is entitled to optimum demand without peak hour restrictions only but not entitled to exemption from scheduled load shedding. In view of the above, the technical feasibility or otherwise as averred is of no avail.

f. With regard to averments in para 11 of the petition, it may be stated that as stated already the respondents have imposed scheduled load shedding to the petitioner for three hours per day only pursuant to Restriction and Control measures in terms of Regulation 38 of the Tamil Nadu Electricity Distribution Code, 2004 which is under the provisions of the Electricity Act, 2003 and as such not entitled to raise any issues in this regard.

g. With regard to the averments in para 12 of the petition, it may be stated that the requirement of power to the petitioner is limited to few days only. As stated already, the feeder is not a dedicated feeder. Therefore, the contra averments in this regard are denied as false. Particularly, the averment that the continuous process industries are to be supplied power at all times except during the power holidays is unacceptable inasmuch as such industries are entitled to exemption only from peak hour restrictions and not for scheduled load shedding.

h. HT supply has been extended to M/s.Dharmapuri Paper Ltd. by 11 KV paper mill feeder fed from Doddampatty 33/11 KV SS for a distance of 11.5 Km. at Board's cost. Besides the petitioner, the feeder is also extended to 1 number OHT service for a load of 42 HP (LT/SC No.70). Hence, the consumer has not come into the category of dedicated feeder.

i. As per Government approval, 3 hours scheduled load shedding is being imposed in other parts of Chennai in Tamil Nadu. So, the above consumer is amenable to undergo 3 hours scheduled load shedding per day on par with the other consumer and the same is in force from 01-11-2008. Such scheduled load shedding in a month works out about four days i.e. 30 days x 3 hours = 90 hours.

j. If the above consumer agrees to restrict the working days after deduction of 4 working days i.e. 17-4=13 (as per R & C measures now in force), then the request of the company for exemption from load shedding may be considered under optimum demand concept subject to the feasibility to extend such exemption in the days to come duly considering the additional connections that may be effected in the present feeder.

k. The petitioner has executed HT agreement while effecting supply wherein clause 7 agreed that it is also open to Board to restrict or impose power cut totally or partially at any time as it deems fit. The Restriction and Control measures including load shedding has been carried out as per clause 38 of the Tamil Nadu Electricity Distribution Code, 2004.

5. Contentions of the Petitioner as set out in the reply Affidavit to the Counter:-

a. The respondents cannot rely upon Regulation 38 of Tamil Nadu Distribution Code for imposing illegal and unscheduled load shedding or power cut that is contrary to the petitioner's entitlement as a continuous process industry.

b. The claim that the petitioner's line is not a dedicated feeder line since it was laid down at Board's cost and is connected to other consumers is entirely without any basis. The petitioner's service line was established as a dedicated feeder line and it is pertinent to state that the petitioner's industry was located in the most backward area in Dharmapuri which, at the time of establishment of the unit, was a hub of naxalite activities.

c. It was in furtherance of the Government policy that the respondent Board, at that time, erected a dedicated feeder line solely for the petitioner's mill at its own cost. This dedicated feeder line of 11 KVA is taken out of the 33 KVA from Dottampet Power House and was a dedicated feeder line right from 03-04-1989. It is entirely misleading to suggest otherwise. As a matter of fact, it is only a small portion of about 42.5 HP / 32 KW which was, as late as on 30-10-2001, diverted to Peramanapatti Power House to enable Tamil Nadu Water Supplies and Sewerage Board to fill the Overhead Tank at Morappur Village for drinking water and distribute the same to Morappur and adjacent villages.

d. The contents of para 11 clearly demonstrate the admission on the part of the respondents of the unscheduled power cuts. Furthermore, the petitioner is entitled to optimum demand and uninterrupted power supply during the periods of its entitlement which right is sought to be arbitrarily interfered with.

e. The interpretation of the respondents that continuous process industries are not required to be supplied with power at all times except during power holiday is entirely without any basis.

f. The contents of para 17 are denied as false as the clauses referred to under the Distribution Code are not applicable to the facts of the present case.

6. In the final hearing held on 20-12-2012, the Commission has held as follows:-

"TANGEDCO has been directed to file orders issued by the High Court in similar cases by 26-12-2012 for perusal of the Commission. Arguments heard. Orders reserved".

The petitioner has filed an additional typed set wherein the petitioner has furnished the affidavit of petitioner in W.P.No.13587 of 2012 and the orders of the High Court in the said Writ Petition.

In the interim order dated 07-10-2012 issued by the Hon'ble High Court in W.P.No.13587 of 2012, the Hon'ble High Court has inter-alia held as follows:-

“In view of the decision in Sanmar Ferrotech Ltd. Vs. Tamil Nadu Electricity Regulatory Commission, reported in 2012 Writ. L.R. 774, there shall be an order of interim injunction till 31-10-2012”.

The decision referred to above namely 2012 L.R. 774 is at pp 18 – 26 of the additional typed set. At paras 11,12,14 and 17 of the order of the High Court, the High Court observed as follows:-

“11. Therefore the Commission proceeded to interpret the earliest Circular Memo dated 1-11-2008 whereby the Optimum Demand Concept was introduced in so far as continuous process industries are concerned. The Commission was of the view that the circular Memo dated 1-11-2008 did not mention about the eligibility of Optimum Demand Concept being restricted, only to consumers who are solely depending on the power supply by the Board. It is only in the Circular Memo dated 31-8-2009 that the Optimum Demand Concept being made applicable only to consumers availing Board's power was introduced and the Commission held the same to be discriminatory and run contrary to the provisions of section 9 (2) of the Electricity Act, 2003 and that it is opposed to the provisions of sub-section (2) of section 42 of the Act where Open Access Concept is recognized by the statute. It also relied upon the Commission's Regulations notified in the year 2005 relating to Open Access Concept. The Commission came to the conclusion that it is not correct to discriminate between the consumers who are solely dependent on the power supply of the Board or others who have their own captive power or purchase power

from third party source. The finding of the Commission at para 6.6.5 is extracted for clarity:

“6.6.5 From the above, it could be seen that the Circular Memo dated 1-11-2008 introduced Optimum Demand Concept for continuous process industries. What was sought to be done in this concept was to provide the eligible quota of KVA days over a continuous period, after adjusting for the lighting load for the security and essential activities as well as load permitted for peak hour for the balance days to be adjusted continuously over certain number of days, the balance days in the month being power holidays. There was absolutely no mention about the eligibility for such Optimum Demand Concept being restricted only to the consumers who are solely dependent upon the TNEB supply. Instructions contained in Memo dated 31-08-2009 clarified that the Optimum Demand Concept would be available to those consumers who avail Boards power supply. When Memos dated 19-12-2008, 4-8-2009 and 21-8-2009 were struck down by the Commission in order dated 28-10-2009 in SMP No.1/2009, Memo dated 9-10-2009 should have been reviewed but this was not done. Further these instructions run contrary to various provisions of the Act.

12. In the view of this Court, the Commission has rightfully considered the provisions of section 9 (2) of the Electricity Act, 2003 which provides that every person, who has constructed a captive generating plant and maintains and operates such plant shall have his right to Open Access for the purposes of carrying electricity from his captive generating plant to the destination of his use subject to availability of adequate transmission facility. Once Open Access is provided, no restriction on captive consumption user is permissible. This is equally applicable for purchase of power from third parties through Open Access in view of sub-section (2) of section 42 and in terms of the orders of the Commission regarding Open Access, passed in

the year 2005. The Commission's order enables all HT consumers to avail Open Access with effect from 17-2-2010, when an amendment to Open Access Regulations was notified.

xxxxxx

14. The respondents plea that the order of the Commission should be restricted to the 9 consumers covered by the transfer applications appears to be the primary reason by which the said facility is denied to the petitioner. The Commission in its order, has interpreted the Optimum Demand Concept and the eligibility of HT consumers to have the said facility by referring to the various provisions of the Electricity Act, 2003, which provides for Open Access facility without restrictions. Therefore, the interpretation that only 9 HT consumers as stated in the order will be eligible to the benefit of Optimum Demand Concept under Open Access facility is a misreading of the order of the Commission. An harmonious reading of the order of the Commission is that it should apply to all similarly placed HT consumers without discrimination and that is evident from the tenor of the order. The issue canvassed by the 9 HT consumers will be applicable to all similarly placed HT consumers as there cannot any discrimination among the same group. Further, the Commission does not adjudicate individual disputes in terms of section 86 (1) (f) of Electricity Act, 2003. The purpose of the Commission to pass orders as per the Electricity Act, 2003 is to lay down general principle governing generation and distribution of electricity. The respondent by stating that the order is applicable only to the 9 HT consumers who had approached the Commission stems on a misconception of law as it will amount to negating the order passed by a statutory authority on discriminatory basis which cannot be permitted".

7. Finding of the Commission:-

7.1. The issue involved in this case is whether an optimum demand consumer is entitled to be exempted from the load shedding effected by the licensee and to be supplied with uninterrupted power at all times except power holidays.

7.2. The petitioner is running a paper industry and had opted for the optimum demand scheme introduced in TNEB memo dated 01-11-2008. The paper manufacturing industry is one of the categories of industry listed as continuous process industry in the said memo of the erstwhile TNEB. This scheme was introduced with a view to aiding continuous process industries which by virtue of their manufacturing process could not be subjected to the normal power cuts as it would completely derail production.

7.3. The petitioner has stated that once the boiler is loaded with raw material, it has to be continuously operated. Any interruption of power supply leading to switching off the boiler could lead to wastage of the entire batch of raw material in all sections in the process. The unscheduled power cuts imposed by the respondents have led to a situation wherein the petitioner is forced to shut down its boiler and the entire machine operations during the power cuts leads to immense losses. He has stated that he has been granted a separate feeder line as far back as the year 1989 and therefore it would not be difficult or infeasible to ensure a steady and uninterrupted supply to the petitioner on grounds of lack of infrastructure.

7.4. On the other hand the respondent in its counter denied the existence of dedicated feeder line for the HT service of the petitioner and submitted that the feeder was laid on Board's cost and the feeder connects to another consumer also.

allowed and as such whatever the demand quota revised due to relaxation of power cut shall be fixed as demand quota. For the above category, optimum demand cannot be permitted.

- (ii) For the existing demand, due to increase in demand quota based on the relaxation of power cut, if the number of continuous working days is increased, the actual number of days works out shall only be permitted. In the above condition, if the number of continuous working days exceeds more than 25 days, then the consumer should avail minimum of 5 days as holiday {30 days x 4 hrs. (peak hour 6 to 10 hrs = 5 days)} For the billing month for availing peak hour exemption in respect of continuous process.

7.7. From the above instructions issued by the respondent, it is clear that the optimum demand will not vary and once opted is final. The above instructions are exhaustive so far as optimum demand scheme is concerned and there is no provision or condition that the optimum demand consumers are further subject to normal load shedding effected by the licensee. When the instructions provide that refixation of demand quota consequent on the relaxation of power cut will not be eligible for reduction of power holidays, it is quite natural to expect that the optimum demand consumers are not subject to usual load shedding. If the load shedding is effected on the optimum demand consumers who are, by nature of their industry, have to operate continuously it will result in switching off the boiler, whereby the entire raw material could lead to wastage. It is all the more difficult situation if the optimum demand consumers are subjected to unscheduled power cuts.

7.8. Further the petitioner has denied the claim of the respondent that the petitioner's line is not a dedicated feeder line. The petitioner has stated that his industry was located in the most backward area in Dharmapuri which at the time of establishment of the unit was a hub of naxalite activities. According to the petitioner it is only a small portion of about 42.5 HP / 32 KW which was as late as on 30-10-2001 diverted to Peramanapati Power House to enable Tamil Nadu water Supply and Sewerage Board to fill the overhead tank at Morappur village for drinking water and distribute the same to Morappur and adjacent villages. That being so, the respondent has not proved their claim to the contrary by any acceptable evidence. The respondent has however agreed to concede the claim for the exemption from load shedding if the petitioner agrees to restrict the working days after deducting 4 working days i.e. $17-4=13$ (as per R&C measures in force). This argument advanced by the respondent clearly shows that uninterrupted power supply to the petitioner is technically possible if the petitioner agrees for restriction of his working days to 13 days instead of 17 days. It is altogether a different case, if the respondent argues that during the scheduled load shedding, it is not technically feasible to give supply to the petitioner alone, when supply to the other consumers are given through the same feeder. But the respondent himself has agreed to give uninterrupted supply without any load shedding if the petitioner restricts his working days to 13. Given the fact that the opposition of the respondents to the optimum demand is only in terms of number of days and there is no strong objection to the exemption from load shedding it is but fair that the continuous process industries such as the petitioner are allowed to run their industries without being subjected to either scheduled or unscheduled load shedding, emergencies excluded.

7.9. The respondent TANGEDCO also raised the issue of considering optimum demand concept in the days to come duly considering the additional connections that may be effected in the present feeder. It is quite likely that in future changes could take place which may include reduction of load shedding and removal of Restriction and Control measure itself.

7.10. In view of the foregoing findings and in view of the fact that there is no provision in the scheme of optimum demand to subject the optimum demand consumers to the normal load shedding and also taking into account the reality that if such consumers are subjected to load shedding during the permitted working days, it will cause irreparable loss to the petitioner's industry and make the optimum demand concept itself defeated, we are of the view that the contention of the petitioner should be accepted. Accordingly we allow the petition. There will be no order as to cost.

8. 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 this order by the aggrieved person.

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission