

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.22 of 2012

and

I.A.No.1 of 2012

in

M.P.No.22 of 2012

R.Nawal Kishore Singh
Son of Ram Bilash Singh
Doing Business at Ashok Nagar
Salem – 636 008.

..... Petitioner
[Thiru A.S.Madheswaran,
Advocate for the Petitioner)

Vs

Tamil Nadu Electricity Board
Rep by its Junior Engineer
Operation and Maintenance
Tamil Nadu Electricity Board
Gorimedu
Salem – 636 008.

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

Dates of hearing : 31-07-2012, 27-11-2012, and
13-12-2012

Date of Order : 28-03-2013

The above M.P.No.22 of 2012 along with I.A.No.1 of 2012 came up for final hearing on 13-12-2012 before the Commission. The Commission after perusing the

above petition and the connected records of the case and after hearing both sides passes the following order:-

ORDER

1. Prayer of the Petitioner in I.A.No.1 of 2012 in M.P.No.22 of 2012:-

The prayer of the petitioner in in I.A.No.1 of 2012 in M.P.No.22 of 2012 is to direct the respondent to restore the electricity service connection to the petitioner's saw mill in Ashok Nagar, Gorimedu, Salem till the disposal of his main petition filed u/s 142 of the Electricity Act, 2003.

2. Prayer of the petitioner in the main petition filed u/s 142 of the Electricity Act, 2003:-

The prayer of the petitioner in the main petition is that the Commission may enquire the matter and impose a sum of Rs.1,00,000/- as fine to be payable by the respondent and with an additional penalty of a sum of Rs.6,500/- per day from 09-05-2012 till the electricity service connection to the petitioner is restored by the respondent.

3. Facts of the Case:-

(a) The Petitioner was previously running a saw mill in another place and subsequently he had vacated the same as it was a rented premises and then he shifted the said saw mill to the present place and thereafter, he made an application to the respondent for electric service connection to him. The service connection provided to his earlier place of business was provided long back on 29-10-2002 and then a new electric service connection was provided to his present place of his business.

(b) The Tamil Nadu Electricity Regulatory Commission has passed an order in M.P.No.30 of 2008 dated 29-06-2009 by which it was made clear that if the Tamil Nadu Electricity Board has effected a service connection to an unlicensed saw mill or a new saw mill which did not have the prior permission of the Central Empowered Committee between the period 29-10-2002 and 15-06-2007, the Tamil Nadu Electricity Board should refer those cases to the authorities competent to issue licenses of such units for fresh examination with reference to the direction of the Hon'ble Supreme Court of India.

(c) The respondent herein had issued a notice to the petitioner dated 25-04-2012 calling upon him to produce the license for the saw mill within seven days from the date of the receipt of the notice and he was further informed that unless the license is produced as stipulated, the electric service connection provided to him would be disconnected without any further intimation. For the said notice, the petitioner had sent a detailed reply notice through his advocate dated 29-04-2012 and called upon the respondent not to disconnect the electric service connection explaining the order passed by the Hon'ble High Court of Madras in W.P.No.14508 of 2011 and the orders passed by the Tamil Nadu Electricity Regulatory Commission in Miscellaneous Petition No. 30 of 2008 dated 29-06-2009. Despite the reply notice, the respondent had disconnected the electric service connection on 09-05-2012. Hence the petitioner has filed the above petition.

4. Contention of the Petitioner:-

(a) The Commission in its order dated 29-06-2009 passed in M.P.No.30 of 2008 held that if the Tamil Nadu Electricity Board has effected a service connection to an unlicensed saw mill or a new saw mill which did not have the previous permission of the Central Empowered Committee between the period 29-10-2002 and 15-06-2009, the Tamil Nadu Electricity Board should refer these cases to the authorities competent to issue licenses of such units for fresh examination with reference to the direction of the Hon'ble Supreme Court of India.

(b) The respondent has got full knowledge about the orders passed by the Commission. The said fact was intimated to the respondent by the petitioner in his reply notice dated 29-04-2012 through his advocate.

(c) Instead of referring the matter to the competent licensing authority, despite the said reply notice dated 29-04-2012, the respondent had disconnected the service connection on 09-05-2012.

(d) The directions issued by the Tamil Nadu Electricity Regulatory Commission in Miscellaneous Petition No.30 of 2008 dated 29-06-2009 to the respondent has not been complied by the respondent who contravened the said order.

5. Contention of the Respondent in the Counter Affidavit:-

(a) The above petition is not maintainable before the Commission in view of the decision of the Supreme Court reported in AIR 2008 SC 1042.

(b) The Commission in M.P.No.30 of 2008 dated 29-06-2009 has passed an order which, inter-alia reads as follows:-

“After 15-06-2007, unless the appropriate authority has sanctioned a saw mill in accordance with the direction of Hon’ble Supreme Court, the TNEB is at liberty to have refused the application for electricity connection. As regards the period between 29-10-2002 and 15-06-2007, if the TNEB has effected a service connection to an unlicensed saw mill or to a new saw mill which did not have the prior permission of the Central Empowered Committee, the TNEB should refer these cases to the authorities competent to issue licenses for such units for fresh examination with reference to the direction of the Hon’ble Supreme Court. The licensing authorities are bound to close down the operation of such unlicensed units or cancel the licenses of new units, if they have not obtained prior permission of the Central Empowered Committee”.

(c) As per the directions of this Commission in M.P.No.30 of 2008 dated 29-06-2009, the respondent have forwarded the list of all saw mills effected between 29-10-2002 and 15-06-2007 to the District Forest Officers concerned and requested to pursue action to close down the operation of such unlicensed units or cancel the licenses of new units at their end.

(d) The Principal Chief Conservator of Forests in his letter dated 23-10-2009 has stated that as the Forest Department is not empowered to issue any license / permission for new saw mills, the question of closing the saw mills for which electricity connections were provided by the respondent between 29-10-2002 and 15-06-2007 does not arise.

(e) The State Government of Tamil Nadu have framed rules regarding opening of saw mills in the State through G.O.Ms.No.156, Environment and Forests (FR.13), dated 21-10-2010 and according to rule 3 thereof, no person shall establish or operate any wood based industries including the existing unit, unless a license is obtained by him in accordance with these rules.

(f) All Superintending Engineers / Electricity Distribution Circle were instructed in memo dated 12-04-2012 to issue notice to the existing saw mill service connections effected after 29-10-2002 to produce their license issued by the competent authority within 7 days and to disconnect the service, if the consumers do not submit the license within the notice period.

(g) Totally 449 numbers saw mill services have been disconnected so far throughout the State for not submitting the license from competent authority under the Tamil Nadu Regulation of Wood Based Industries Rules 2010 and the Petitioner's saw mill is one among them which was disconnected on 09-05-2012.

(h) A batch of (40) Writ Petitions (W.P.Nos.12861 of 2012 etc. batch) were filed before the Hon'ble High Court of Madras by the consumers of saw mills which are wood based industries in which main prayer was to permit running of saw mills pending applications for grant of license from Forest Department and to restore electricity service in case of disconnected services.

(i) In the above case, a common order was passed by the Hon'ble High Court of Madras on 12-06-2012, in which it is stated that till the time of the license issued by

Competent Authority after following the procedure as applicable, the Petitioners cannot claim as a matter of right to run the industry or for grant of electricity power supply.

(j) With regard to the averments in paragraph 5 of the affidavit, that it is admitted by the petitioner himself that the service connection effected was during the year 2006 and it was a new service connection. Therefore, the service connection in dispute is covered within the said order, dated 29-10-2002 passed by the Hon'ble Supreme Court.

(k) The order dated 29-10-2002 passed by the Hon'ble Supreme Court of India is a law declared by Supreme Court under Article 141 of the Constitution of India, which is binding on all courts within the territory of India. In view of all the above and more particularly, as no license was produced by the petitioner herein despite lapse of about six years from the date of effecting service connection or about eighteen months from the date of framing of Rules, 2010 by the Government of Tamil Nadu so as to enable the petitioner to continue the saw mill legally in terms of the said orders of the Hon'ble Supreme Court, the service connection was disconnected on 09-05-2012.

(l) Relying on the decision of the Hon'ble High Court Madras in its order dated 12-06-2012 in W.P.No.12861/2012 in paras 21 to 26, the respondent contended the pendency of the application of petitioner seeking license before the licensing authority cannot be a ground to seek non-disconnection or reconnection of the disconnected service connection for non-production of license to operate saw mill

particularly in respect of service connection effected on and after 29-10-2002 to saw mills. The aforesaid judgment operates in rem and the petitioner is bound by the said order.

6. Hearing held on 31-07-2012:-

The above M.P.No.22 of 2012 along with I.A. No.1 of 2012 are admitted by the Commission on 31-07-2012 and TANGEDCO was directed to file counter bringing all issues relevant to the disposal of the above petition.

7. Hearing held on 27-11-2012:-

In the hearing on 27-11-2012, the Commission held as follows:-

“Counsel for both side were present. The above petition was taken up for arguments. The Respondent / TANGEDCO in their counter raised the issue of maintainability of the petition before the Commission, in view of the decision of the Supreme Court reported in AIR 2008 SC 1042. Besides this, many other issues on merits were raised. The Commission would like to decide the maintainability of the petition first and then other issues on merit can be dealt with. To decide the maintainability, the Learned Advocate for the respondent was not ready and sought for an adjournment. The respondent shall file their submissions on the maintainability within two weeks, after serving a copy on the other side. The matter shall be listed thereafter”.

Finding of the Commission:-

8. The petition and IA were admitted on 31-7-2012. The matter was subsequently heard on 27-11-2012. The counter of the Respondent TANGEDCO

raised the issue of maintainability of the petition before the Commission in view of the decision of the Hon'ble Supreme Court reported in AIR 2008 SC 1042. Subsequently, the Respondent TANGEDCO did not question the maintainability of the petition and did not rely on the above referred judgement of the Hon'ble Supreme Court. The matter was finally heard on 13-12-2012.

9. This petition is filed under Section 142 of the Electricity Act for levy of penalty on the Junior Engineer, O & M, Salem for disconnection of the service connection of the petitioner.

10. The IA No. 1 of 2012 in the same petition sought relief of reconnection of the disconnected service. The Commission is of the view that under section 142 of the Electricity Act 2003, the Commission could levy the penalty but that section does not empower the Commission for providing reliefs to the consumer until and unless the same is covered by any other provisions of the Electricity Act or Rules or Regulations. Accordingly, the Commission did not issue any Order for reconnection as prayed for in the IA.

11. The service connection of the consumer was energized on 24-5-2006. The written submissions as well as arguments centered around the Order of the Hon'ble Supreme Court in MP (C) No. 202 of 1995 dated 29-10-2002 and the relevant portion of the Order is extracted below:-

“No State or Union Territory shall permit any unlicensed saw-mills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any saw-mills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of

each State will ensure strict compliance of this direction. There shall also be no relaxation of rules with regard to the grant of license without previous concurrence of the Central Empowered Committee”.

12. The Chief Secretary to Government of Tamil Nadu vide his Letter dated 26-3-2007 has directed as follows:-

“I am directed to request you to pursue necessary action to ensure strict compliance of the order of the Hon’ble Supreme Court of India. I am further directed to inform you that in violation of the above order if any saw mill is functioning with the license / sanction / electricity etc. issued by them after 29.10.2002 without Central Empowered Committee’s permission, then your Department will be held fully responsible for violating the orders of Hon’ble Supreme Court of India and in the contempt proceedings if any initiated in this matter”.

13. Reference has also been made to an Order issued by this Commission in MP No. 30 of 2008 on 29-6-2009 and the relevant portion is extracted below:-

“After 15-6-2007, unless the appropriate authority has sanctioned a saw mill in accordance with the direction of Hon’ble Supreme Court, the TNEB is at liberty to have refused the application for electricity connection. As regards the period between 29-10-2002 and 15-6-2007, if the TNEB has effected a service connection to an unlicensed saw mill or to a new saw mill which did not have the prior permission of the Central Empowered Committee, the TNEB should refer these cases to the authorities competent to issue licenses for such units for fresh examination with reference to the direction of the Hon’ble Supreme Court. The licensing authorities are bound to close down the operation of such unlicensed units or cancel the licenses of new units, if they have not obtained prior permission of the Central Empowered Committee”

14. From the Order of the Supreme Court in WP (C) No. 202 of 1995 it could be seen that any unlicensed saw mill would not be permitted to operate and they were directed to close all such unlicensed unit forthwith. The Order also directed that there shall be no relaxation of Rules with regard to the grant of license without previous concurrence of the Central Empowered Committee. The direction of the

Chief Secretary, Government of Tamil Nadu indicates that any saw mill functioning with the license / sanction / electricity etc. issued after 29-10-2002 without Central Empowered Committee's permission, in violation of the Order of the Apex court, the concerned Department will be held responsible for violating the Orders of the Court. The direction given in MP No. 30 of 2008 by this Commission was that if a service connection was effected by TNEB to an unlicensed saw mill or to a new saw mill which did not have a prior permission of the Central Empowered Committee, the TNEB should refer these cases to the authorities competent to issue license for such units for fresh examination with reference to the direction of the Hon'ble Supreme Court. This Order further observes that the licensing authorities are bound to close down the operation of such unlicensed units or cancel the licenses of new units, if they have not obtained prior permission of the Central Empowered Committee.

15. The respondent have further stated that the Tamil Nadu Regulation of Wood Based Industries Rules, 2010 were framed on 21-10-2010 by the Government of Tamil Nadu according to which no person shall establish or operate any wood based industries including the existing units unless license is obtained by him in accordance with these Rules. The respondent has also stated that totally 449 number saw mill services have been disconnected so far throughout the State for not submitting license from competent authority under the Tamil Nadu Regulation of Wood Based Industries Rules. The respondent has also pointed out that a batch of 40 writ petitions (WP Nos 12861 of 2012 etc batch) were filed before the Hon'ble High Court of Madras by consumers operating saw mills which are Wood Based Industries in which main prayer was to permit the running of saw mills pending applications for grant of license from Forest Department and restore electricity

service in case of disconnected services. The respondent has contended that a common Order was passed by the Hon'ble High Court of Madras on 12-6-2012 in which it is stated that till the time of the license issued by competent authority after following the procedure as applicable, the petitioners cannot claim as a matter of right to run the industry or for grant of electricity power supply. The respondent has further pointed out that they have issued a notice to the consumer saw mill in response to which the petitioner herein has issued a legal notice on 29-4-2012 stating the fact of filing of WP No. 14508 of 2011. Para 4 of the judgment in WP No. 14508 of 2011 dated 23-06-2011 is relevant which is reproduced below:-

“If the application of the petitioner is in accordance with Rule 11 of the aforesaid Rules and if the application is in order supported by the required material, the District Forest Officer is directed to consider the said representation dated 18-5-2012 on merits, and in accordance with law, within a period of 3 weeks, from the date of receipt of the copy of this Order. Till such time the District Officer takes a decision as directed by this Court coercive step need not be taken.”

16. It is to be noted that the respondents in this writ petition are the District Forest Officer, Salem and the Additional Principal Chief Conservator of Forest and Chairman, State Level Committee, Chennai-15. The Distribution licensee Viz., TANGEDCO was not a party to this writ petition.

17. A reference has also been made to the Order dated 2-8-2012 of the Madurai Bench of Madras High Court in a batch of writ petition WP No. 8930 of 2012 etc. Perusal of this Order indicates that the Hon'ble High Court has passed this Order **by consent of all the parties**. The Order deals with many issues but the relevant issue with regard to Electricity supply alone is extracted below:-

“If the Saw Mills of the petitioners have been started after 2002, Viz., after the order of the Hon'ble Apex Court, definitely, they

have to approach the authorities concerned and get clearance from the Central Empowered Committee and till they get clearance from the Central Empowered Committee, they are not entitled to get electricity service connection and the Electricity Department is at liberty to disconnect the electricity service connections.”

18. In view of the issues discussed above and in view of the specific findings of the Madurai Bench of the Madras High Court in its Order dated 2nd August 2012 as extracted above, the Commission is of the view that the petitioner has not established that the respondent has violated any of the provisions of the law or the directions of the Court. In view of this MP No. 22 of 2012 and IA No. 1 of 2012 in MP No. 22 of 2012 are dismissed. No Orders as to costs.

19. 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 order by the aggrieved person.

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission