

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**

R.A.No.4 of 2011

Tamil Nadu Electricity Consumers' Association
Represented by its President
No.8/732, Chamber Towers
Avinashi Road
Coimbatore – 641 018.

The Southern India Mills Association
Represented by its Joint Secretary (Legal)
No.41, Race Course Road
Coimbatore – 641 018.

... Petitioners
[Thiru.N.L.Rajah,
Advocate for the Petitioners)

Vs

Tamil Nadu Generation and Distribution
Corporation Ltd.
144, Anna Salai
Chennai – 600 002.

..... Respondent
(Thiru P.H.Vinod Pandian
Standing Counsel for Respondent)

Dates of hearing : **12-10-2011, 04-11-2011, 16-04-2012**
26-04-2012, 29-05-2012, 21-06-2012
and 28-09-2012

Date of Order : **28-03-2013**

1. This is a Remand Application arising on account of the order of the Hon'ble Appellate Tribunal for Electricity dated 28-07-2011 in Appeal Nos. 192 of 2010 and 206 of 2010.

2. In the said Appeal, the Hon'ble APTEL has partly allowed the appeal to the extent indicated therein and set aside the impugned order and directed the State Commission to pass consequential orders based on the findings of the Tribunal.

3. The impugned order in the Appeal under reference was the order passed by the Commission on 31-07-2010, determining the tariff for generation, intra-state transmission and retail supply tariff. One of the points urged in the said Appeal is the withdrawal of incentive for power factor although the licensee did not pray for the same and hence it is violative of regulation 12 of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005. On this issue the finding of the Hon'ble Tribunal is that the State Commission should have decided the matter based on the prevailing regulations at the time of passing order (i.e. as on 31-07-2010) over ruling the contention of the Commission that the Supply Code providing for incentive for power factor was amended to dispense with the same, with effect from 25-10-2010 retrospectively. In the result, the issue was decided by the Tribunal in favour of the Appellant (i.e. the petitioners herein) with directions to the State Commission to pass consequential orders based on its findings. Thus the matter has now come to be implemented by this Commission in the present Remand Application.

4. Finding of the Commission:-

4.1. The present proceedings before the Commission arises out of withdrawal of incentives for maintaining power factor above the stipulated limit of 0.95 (lag) in the

Tariff Order dated 31-7-2010 and the direction given by ATE in Appeal No.192 of 2010 and 206 of 2010 directing the Commission to decide on the incentive after giving proper reasoning for the same. The relevant portion of the Hon'ble Appellate Tribunal for Electricity on this issue, as contained in paragraph 11 of the Order extracted below:-

“11. The sixth issue is regarding incentive for power factor.

11.1. According to the learned Senior counsel for the appellants, withdrawal of incentive for power factor is violative of Regulation 12. This has been done suo motu without any request from the first respondent.

11.2. According to the learned counsel for the respondent no. 1, the State Commission's suo motu withdrawal of incentive for power factor is not bad in law.

11.3. According to the learned counsel for the State Commission, the incentive for high power factor was introduced for the industrial consumers in its first tariff order of 15.3.2003 in order to create awareness. Subsequently, all such consumers who maintained high power factor have been rewarded by way of lesser charges due to lesser maximum demand. This incentive has been withdrawn as the consumers have already been benefited by reduced maximum demand and they will continue to benefit on this account in future too. It is obligatory for the consumer to generate adequate reactive power at his load end in accordance with the State Distribution Code, Grid Code and Indian Electricity Grid Code. Earlier, there was a provision for incentive/disincentive for power factor in its Supply Code which has since been deleted by an amendment w.e.f. 1.8.2010.

11.4. Let us first examine the provisions of Tariff Regulations regarding power factor incentive. The relevant Regulation 12 is reproduced below:

“12. Power Factor

The Commission may direct certain categories of consumers to maintain power factor at a prescribed level and allow incentive/disincentive for maintaining above /below the prescribed level”.

11.5. Section 61(e) of the 2003 Act provided for consideration of the principles rewarding efficiency in performance.

11.6. *The State Commission in the impugned order has specified the power factor required to be maintained for certain categories of consumers and disincentive for not maintaining the same but has not specified any incentive for maintaining a higher power factor than the benchmark. The impugned order is also silent about the reason for withdrawing the incentive which was earlier available. The learned counsel for the State Commission has now tried to provide a reasoning for the same.*

11.7. *The State Commission's Regulation provides for the State Commission prescribing the power factor benchmark and allowance of incentive for power factor above the benchmark and disincentive below the benchmark power factor. While the State Commission has prescribed the disincentive for power factor below the benchmark, it did not provide for incentive for power factor above the benchmark. In our opinion, the incentive and disincentive for maintaining power factor above and below the benchmark have to go together as per the Regulation-12.*

11.8. *It is now argued by the learned counsel for the respondents that the consumer gets benefit for improving the power factor above the benchmark as its maximum demand also reduces. Thus, additional incentive for improving power factor is not required. This reasoning, though not forming the part of the impugned order, does not have any force. If the same reasoning is advanced for disincentive for low power factor, the consumer has to pay higher maximum demand charges if it maintains a low power factor. The basic purpose of specifying the benchmark power factor and incentive for power factor is to reduce the reactive power drag on the system which results in lower voltage and higher T&D losses and, therefore, the consumer has to be encouraged to maintain a higher power factor. Technically also it is most beneficial for reducing T&D losses if the reactive compensation is provided at the consumer's end and therefore incentive/disincentive for power factor is provided. It is correct that it is obligatory on the consumer to maintain the benchmark power factor as per the Distribution Code, Grid Code, etc., but if a higher power factor than the benchmark is maintained it helps the system and needs to be incentivised.*

11.9. *The learned counsel for the State Commission has argued that the Supply Code provided for incentive for higher power factor has since been amended on 25.10.2010 retrospectively w.e.f. 1.8.2010. Thus, when the impugned order was passed, the Supply Code had a provision for incentive for higher load factor. The decision of the State Commission has to be based on the prevailing regulations. While we agree with the learned counsel for the State Commission that the State Commission is empowered to change tariff suo motu without a request from the distribution company, the State Commission in this case should have allowed incentive for higher power factor according to the prevailing Regulations. Accordingly,*

this issue is decided in favour of the appellants. We are, however, not giving any finding on the quantum of incentive and the State Commission may decide the incentive after giving proper reasoning for the same.”

4.2. The order remanding the issue of power factor was taken on the file of the Commission and numbered as R.A. No. 4 of 2011. Hearings were held on 12-10-2011, 4-11-2011, 16-4-2012, 26-4-2012, 29-5-2012, 21-6-2012 and finally on 28-9-2012. The TANGEDCO was directed to file written statements by 10th October, 2012 and it was filed on 11th October, 2012. During the hearing both Tamil Nadu Consumers' Association and The Southern India Mills Association, the appellants in the appeal before ATE, have filed affidavits to the effect that they are entitled to power factor incentive from 31-7-2010 to 25-10-2010, that is upto the period prior to the amendment to the supply code was actually notified. The copy of the notification in this regard is reproduced below:-

“Explanatory Memorandum to the Tamil Nadu Electricity Supply (Amendment) Code, 2010 notified vide Notification No. TNERC/SC/7-21 dated 25-10-2010.

- 1. The Tamil Nadu Electricity Regulatory Commission has proposed an amendment to regulations 4 and 5 of Tamil Nadu Electricity Supply Code and the proposed amendment was posted in the website and the Commission invited comments/suggestions on or before 13-9-2010. Comments/suggestions which were received from the interested stakeholders could be divided broadly into two categories.*
- 2. The first category of comments, which were received from industrial units, supported the continuation of the incentive for maintaining near about unity power factor. It was also pointed out that Madhya Pradesh Electricity Regulatory Commission, Gujarat Electricity Regulatory Commission and Kerala Electricity Regulatory Commission have provided incentives for maintaining power factor at higher level. A view was also expressed that most of the consumers would maintain the power factor at around 0.9 lag and therefore the TNEB will be*

the most affected party in the discontinuance of the incentive. Some consumers have suggested discontinuance of incentives for high power factor for HT/LT, if power factor is computed with “lag only logic”

3. *On the contrary, the TNEB has indicated as follows:*

- a) *The measurement of power factor based on “lead as lead” logic has prevented more compensation by the consumer.*
- b) *Considering the quantum of incentive to the tune of Rs.120 crores paid to the consumers during 2009-10, the amendment proposed by the Commission is a welcome measure.*
- c) *Maintaining power factor at higher level is itself an incentive as it lead to stable voltage, reduced chances of damage to consumer equipments and cost saving due to lower energy charge.*

4. *The provisions relating to power factor specified in the Tamil Nadu Electricity Distribution Code (TNEDC), Tamil Nadu Grid Code (TNGC) and Indian Electricity Grid Code (IEGC) are reproduced below:*

Regulation 13(3) of TNEDC

.....
...

It shall be obligatory on the part of the consumers to improve the power factor of their connected loads to the required level in accordance with the provisions made in this code. Every consumer with a power factor less than the stipulated level may be suitably advised to rectify the situation by installing appropriate power factor correction equipment, without prejudice to the levy of compensation charges as per the orders of the Commission from time to time.

Regulation 8(6)(ii) of TNGC

ii) All the end users, distribution licensees, transmission licensees and STU are expected to provide local VAR compensation such that they do not draw VARs from the HV Grid. VAR compensation has to commence in the following order.

- **Consumer end**
- **Distribution transformer end**
- **At the substations end of 11 / 22 KV distribution feeders**
- **Substations**

- *Generating stations*

Regulation 4.6.1(a) of IEGC

Reactive Power compensation and/or other facilities, shall be provided by STUs, and Users connected to ISTS as far as possible in the low voltage systems close to the load points thereby avoiding the need for exchange of Reactive Power to/from ISTS and to maintain ISTS voltage within the specified range.

- 5. As per the above stipulations, it shall be obligatory on the part of the consumer, to generate adequate reactive power at his load end so as to maintain stipulated power factor in the network.*
- 6. Though, it is the responsibility of every entity to maintain the specified power factor in the electrical system, the role of the consumer is most important because only if the consumer maintains a power factor of near unity in his load end, the entire network (from generator to the load) is relieved of carrying the reactive power.*
- 7. Maintaining high power factor at load end (consumer end) helps to maintain the stability of the grid and good voltage profile in the electrical network. This ultimately helps the consumer to avail quality power.*
- 8. The important factor to be considered is that by maintaining a high power factor, a consumer could save his electricity charges considerably by way of reduced demand charges. By way of lower demand charges, a consumer can recover his capacitor installation cost within a few months. After this short pay back period, the consumer is continuously benefited by the lower demand charges.*
- 9. In the above circumstances, the Commission considers that any further incentive provided to the consumer by the TNEB would be a bonus for the consumer. The incentive being paid as power factor incentive, if used directly by TNEB for installing additional capacitors, it will benefit all the consumers. Therefore, the Commission finds no reason to extend the benefit of high power factor incentive to limited consumers and therefore the Commission decides to withdraw the incentive component for power factor improvement with effect from 01-08-2010 as stipulated in the tariff order No. 3 of 2010 dated 31-07-2010.*
- 10. In exercise of powers conferred under section 181 read with section 50 of the Electricity Act, 2003 (Act 36 of 2003) and all other powers enabling it in this behalf, the*

Tamil Nadu Electricity Regulatory Commission hereby makes the following amendments to the Tamil Nadu Electricity Supply Code, 2005.

(By order of the Commission)

**Secretary
Tamil Nadu Electricity Regulatory Commission**

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION
CHENNAI**

Notification No. TNERC/SC/7 -21, dated 25-10-2010.

WHEREAS the Tamil Nadu Electricity Regulatory Commission specified the Tamil Nadu Electricity Supply Code under section 50 of the Electricity Act 2003 (Central Act 36 of 2003) and notified the same in the Tamil Nadu Government Gazette, dated the 1st September, 2004;

AND WHEREAS it is considered necessary to issue certain amendments to the Tamil Nadu Electricity Supply Code and such amendments shall be subject to the condition of previous publication and accordingly undergone previous publication;

NOW THEREFORE, in exercise of the powers conferred on it by section 181 read with section 50 of the Electricity Act 2003, and all other powers enabling it in this behalf, the Tamil Nadu Electricity Regulatory Commission hereby makes the following amendments to the Tamil Nadu Electricity Supply Code (hereinafter referred to as the Principal Code), namely:-

1. Short title and Commencement:-

*(a) This Code may be called the **Tamil Nadu Electricity Supply (Amendment) Code 2010**;*

(b) It shall be deemed to have come into force with effect from 01-08-2010. i.e. the date on which the Commission's retail tariff order No. 3 of 2010 came in to effect.

2. Amendment of Regulation 4 of the Principal Code:-

In the Principal Code, in sub-regulation (1) of regulation 4, for clause (iii), the following clause shall be substituted, namely:-

“(iii) Disincentive for power factor

Every consumer shall maintain a power factor –

In case of LT supply, of 0.85; and

In case HT supply, of 0.90

failing which he shall be liable to pay compensation by way of disincentive at such rates as the Commission may declare from time to time”.

3. Amendment of Regulation 5 of the Principal Code.-

In the Principal Code, in sub-regulation (1) of regulation 5, in clause (b), for the expression “(which are not coming under the purview of power factor incentive / disincentive scheme)” occurring in the first sentence, the expression “(which are not coming under the purview of power factor disincentive scheme)” shall be substituted.

(By order of the Commission)

**Secretary
Tamil Nadu Electricity Regulatory Commission”**

4.3. In its written statement submitted on 11th October, 2012 TANGEDCO has contended that the Hon’ble Appellate Tribunal for Electricity, reviewing the amendment of State Commission is without jurisdiction and the validity of the regulation made by the Commission under section 181 could not be challenged by way of an appeal under section 111 of the Act. We are unable to agree with the said submission. It is to be noted that the direction of the Hon’ble APTEL in the said appeals under section 111 is that the State Commission should have passed orders in accordance with the existing Regulations at the time of issue of the impugned order. TANGEDCO has sought to contend that since the Regulation was amended with retrospective effect viz., from 01-08-2010 and the Hon’ble APTEL could not go into the vires of the Regulation in an appeal filed under section 111 of the Act, it has a fair chance of succeeding in the second appeal filed before the Hon’ble Supreme

Court of India in CA No. 267 – 268 / 2012. To a specific query regarding whether any stay has been granted against implementation of the Order of the APTEL under discussion, TANGEDCO confirmed that no stay has been granted in the appeal filed before the Apex Court. At the cost of repetition, it is to be reiterated here that we are only implementing the orders of the Hon'ble Appellate Tribunal in a case of specific remand and hence the broader issue of vires of Regulation TANGEDCO's chances of success in the Hon'be Supreme Court cannot lend any support to TANGEDCO in the present proceedings. The only issue on which TANGEDCO could have advanced its submission is the quantum of rebate as it is the point on which ATE remanded the matter to the Commission. However, we are to observe here that TANGEDCO, instead of advancing its arguments on the quantum of rebate, has chosen to raise issues which are not relevant to the present proceedings before this Forum and hence it is to be concluded that TANGEDCO has no submissions on this score. In view of the foregoing findings, we direct TANGEDCO to provide all consumers, incentive for maintaining power factor at the rate at which it existed prior to its withdrawal, for the period from 01-08-2010 to 25-10-2010.

5. 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

