

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.P.No.1 of 2012

in

M.P.No.21 of 2011

M/s.Sree Kaderi Ambal Mills Ltd.
Super B-3, Industrial Estate
Madurai – 625 007
Rep. by its Managing Director
Thiru S.V. Pethaperumal

..... Petitioner
(Thiru K.Seshadri
Advocate for Petitioner)

Vs

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.

2. The Chief Engineer (NCES)
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.

3. The Superintending Engineer
TANGEDCO
Tirunelveli Circle
Tirunelveli – 627 011.

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

Dates of hearing : 16-02-2012, 17-04-2012 and 20-12-2012

Date of order : 30-01-2013

The above R.P.No.1 of 2012 in M.P.No.21 of 2011 came up for hearing before the Commission as to admission on 20-12-2012. The Commission after hearing the learned Counsel for the Petitioner passes the following Interim Order as to admission:-

INTERIM ORDER

1. Prayer in R.P.No.1 of 2012 in M.P.No.21 of 2011:-

The prayer of the Petitioner is to review the order dated 03-11-2011 and quash the impugned orders of the third Respondent and direct him to adjust the units generated through wind mills with the units consumed in their H.T.S.C.Nos.46 and 75 of Sivagangai Electricity District Circle, Sivagangai.

2. Facts of the case:-

The Petitioner seeks to review the order dated 03-11-2011 passed by the Commission in M.P.No.21 of 2011 under section 94 (1) (f) of the Electricity Act, 2003 read with clause 43 of Tamil Nadu Electricity Regulatory Commission–Conduct of Business Regulations, 2004. The operative part of the said order dated 03-11-2011 which the Petitioner seeks for a review is reproduced below:-

“ORDER

Delay condoned. The Commission heard the learned counsel for the petitioner. The counsel admits that the captive consumption has been less than 51% of generated energy which is the limit laid down in clause 3 of the Electricity Rules, 2005 for treating the generation plant as a captive generation plant. The counsel further pleads that the Electricity Rules 2005, more particularly Rule 3 of the said Rules would not apply to generating plants owned by a single owner such as the petitioner. We are unable to accept this interpretation of the Electricity Rule 2005. All the three wind mills of the petitioner were set up in 2008-09 much after the commencement of the Electricity Rules 2005 and therefore, the said Rules will apply in-toto to the petitioner’s plants. Rule 3 of the Electricity Rules, 2005 (vide GSR 379 (E), dated 8-6-2005) is extracted below:

“3. Requirements of Captive Generating Plant.- (1) No power plant shall qualify as a Captive Generating Plant’ under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant-

- (i) not less than twenty six percent of the ownership is held by the captive user(s), and*
- (ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.”.*

In view of this Rule, if the two conditions (i) & (ii) above are not fulfilled, the power plant shall not qualify as a captive generating plant. By the Petitioner’s own admission, they have not consumed the minimum stipulated requirement of 51% of the energy generated. In view of this, the generating plant of the petitioner cannot be treated as a captive generating plant. Hence, the petition is dismissed at the admission stage”.

3. Contention of the Petitioner as set out in R.P.No.1 of 2012:-

a. The captive generating plant was installed for his own consumption as defined in first part clause (8) of section 2 of the Electricity Act, 2003. Therefore, the Petitioner wind mills cannot be insisted to comply with the two conditions stipulated in the orders of the Commission.

b. The condition in Rule 3 of Electricity Rules, 2005 that the captive user should consume not less than fifty one percent of the energy generated in an annual basis is to protect the captive user from the generating plant diverting the entire power generated to other third party consumers.

c. Non-consumption of fifty one percent of the energy generated would not cause any loss or damage to the Respondents and the unutilized energy banked will

be ultimately deemed to be purchased by the Respondents at the rates fixed by this Commission.

d. The imposition of the condition that the captive generators should consume not less than fifty one percent would defeat the concept of captive generation especially the wind generation.

e. The conditions based on which the Miscellaneous Petition is dismissed cannot be imposed on the Petitioner merely because he is a captive generating plant.

4. Hearing held on 17-04-2012 and 20-12-2012:-

In the hearing held on 17-04-2012 the learned Counsel for the Petitioner argued that the Miscellaneous Petition was originally heard by the full Commission and therefore the Review Petition may also be heard by the full Commission. On 20-12-2012, the learned Counsel for the Petitioner did not object to taking up the Review Petition in the absence of the Chairman of the Commission. He argued the case and in support of his argument, he filed (2005) 4 SCC 741.

5. Finding of the Commission:-

(a) R.P. No. 1 of 2012 in M.P. No. 21 of 2011 is filed by M/s. Sree Kaderi Ambal Mills Ltd., Madurai for review of this Commission's Order in M.P. No. 21 of 2011. M.P. No. 21 of 2011 was dismissed at the admission stage itself by this Commission as conditions 1 & 2 of Rule 3(i) (a) of Electricity Rules 2005 (vide GSR 379 (E), dated 8-6-2005) were not met. The Commission took the above view based on the fact that the condition (1) i.e. not less than 26% of the ownership is held by the

captive users and (2) not less than 51% of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use are not met collectively. In the present review petition the petitioner argues that he has installed the captive generating plants for his own consumption as defined in sub-section (8) of section 2 of the Electricity Act, 2003, which defines the captive generating plant as follows:-

“2(8) “Captive generating plant” means a power plant set up by any person to generate Electricity primarily for his own use and includes a power plant set up by any co-operative society or Association of persons for generating electricity primarily for use of members of such co-operative Society or Association”.

(b) The petitioner further contends that non-consumption of 51% of the energy generated would not cause any loss or damage to the Respondent especially when the un-utilized energy banked will be ultimately deemed to be purchased by the Respondent TANGEDCO at the rates fixed by this Commission. There appears to be no sale of Electricity to any other third party. Under these circumstances the Commission admits the review petition. Both the review petition No. 1 of 2012 and miscellaneous petition No. 21 of 2011 will be taken up together for final disposal. The review petitioner is directed to serve copies of the R.P. No. 1 of 2012 as well as MP No. 21 of 2011 to the Respondents. The Respondents shall file their counter within 4 weeks. The matter shall be listed thereafter.

Ordered accordingly

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

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

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission