

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:-**

**Thiru.S.Nagalsamy** .... **Member**

and

**Thiru.G.Rajagopal** .... **Member**

**R.P.No.1 of 2012**  
in  
**M.P.No.21 of 2011**

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

... Review Petitioner  
(Thiru K.Seshadri,  
Advocate for the 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.

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

**Dates of hearing : 16-02-2012, 17-04-2012, 20-12-2012  
30-01-2013 and 05-02-2014**

**Date of order : 05-02-2014**

The above Review Petition came up for final hearing on 05-02-2014. The Review Petition has been filed to review the order dated 03-11-2011 passed by this

Commission in M.P.No.21 of 2011. The prayer in the said M.P.No.21 of 2011 is to declare the petitioner's plant as a captive generating plant. The Commission after hearing the parties and upon perusing the relevant documents passes the following order:-

### **ORDER**

#### **1. Prayer in the Review Petition:-**

The Review Petition has been filed to review the orders dated 03-11-2011 passed by this Commission in M.P.No.21 of 2011 and also to 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 HT S.C.Nos.46 and 75 of Sivagangai Electricity Distribution Circle, Sivagangai.

#### **2. Facts of the Case:-**

The petitioner filed M.P.No.21 of 2011 before this Commission seeking to quash the impugned Letter No.SE/TEDC/Tin/AO/Rev/HTS/AS/F.WEG./HT.S.C.No.2644/D/10, dated 31-07-2010 issued by the third respondent and to direct the respondents to adjust the units generated through wind mills with the units consumed in their H.T.S.C.No.46 and 75 of Sivagangai Electricity Distribution Circle, Sivagangai. The said Miscellaneous Petition was dismissed on 03-11-2011 on the ground that the petitioner has not complied with two conditions under section 9 read with clause (8) of section 2 of the Electricity Act, 2003. The present Review Petition has been filed to review the said orders.

#### **3. Contentions of the Petitioner:-**

3.1. The Commission came to the conclusion that if the above two conditions are not fulfilled, the power plant shall not qualify as a Captive Generating Plant and that

the petitioner has not consumed the minimum stipulated requirement of fifty one percent of the energy generated, the Generating Plant of the Petitioner cannot be treated as Captive Generating Plant.

3.2. 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 Windmills cannot be insisted to comply with the two conditions stipulated in the orders of this Commission.

3.3. 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 on an annual basis is to protect the captive user from the generating plant diverting the entire power generated to other third party consumers.

3.4. 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.

3.5. The imposition of the condition that the Captive Generator should consume not less than fifty one percent should defeat the concept of captive generation especially the Wind Generation.

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

#### **4. Contention of the Respondents:-**

4.1. While issuing the installation approval dated 28-06-2008 to the petitioner, a condition as in paragraph 11 extracted below was imposed:-

“11) As per Electricity Rules, 2005 the captive user(s) shall hold not less than 26% of the ownership of the Wind Electric Generating Plant in aggregate and such captive user(s) shall consume not less than 51% of the aggregate energy generated by such wind mill determined on an annual basis. At the end of the year, if any of the above condition is not satisfied, the entire energy generated will be treated as sale to Board and paid at the rate of Rs.2.90 per unit by Superintending Engineer /Tirunelveli EDC (generator end) and for the energy consumed by the captive user(s) the appropriate HT tariff rate have to be collected by the Superintending Engineer / Sivagangai EDC (wheeling end).

The Superintending Engineer / Tirunelveli EDC (generator end) is requested, to verify the evidences produced by the owner of the WEG(s) for the above said percentages every year”.

4.2. By accepting the above condition, the petitioner has commissioned the WEG and executed the Energy Wheeling Agreement (EWA) on 11-07-2008 and 21-01-2009. From the date of agreement, the TANGEDCO has not stopped the wheeling of wind energy for their captive consumption. The petitioner is having

arrangement with respondent for selling surplus energy after adjusting their captive consumption. Therefore, the contention that it is not required to comply with the provisions in the Electricity Rules, 2005 requiring to consume not less than 51% of the aggregate energy generated is a delusion.

4.3. Eventhough, the petitioner company has the 100% ownership on the Wind Mill and the factory, since the petitioner company has not satisfied the second condition of Electricity Rules, 2005 i.e. 51% of consumption for the financial year 2009-10 ended on 31-03-2010, the Superintending Engineer / Tirunelveli EDC has issued notice to the petitioner that the petitioner has not fulfilled the second condition of the said rules i.e. 51% of consumption for the year 2009-10 ended on 31-03-2010, and treated the energy generated from the Wind Mill as sale to Board, which is in accordance with law.

4.4. The condition in the Electricity Rules, 2005 for captive generating plant is common to all the States not only to Tamil Nadu. But the petitioner has raised doubt not only in the Order No.3 dated 15-05-2006, but also in the Electricity Act, 2003 which amounts to challenging the TNERC Order No.3, dated 15-05-2006 and TNERC Order No.1, dated 20-03-2009 and TNERC Intra State Open Access Regulation, 2005 which are impermissible that too before this Commission. In so far as the expression "Act does not provide any restriction for self-use of energy by a generator in regard to service category" employed in issue No.16 of Order No.3 dated 15-05-2006 is concerned, it is submitted that the term "self-use" used therein denotes captive use. Besides, the decision therein was recorded by the Commission in the context of allowing adjustment through captive mode in all HT services instead

of restricting to HT industrial consumers only. The same cannot be relied upon by the petitioner.

4.5. Knowing the fact that the above two condition have to be fulfilled every year, the petitioner has paid the Long Term Open Access Agreement fee for the wheeling arrangement. The action of the petitioner now is to escape from the statutory rules / regulations / orders framed / issued under the Electricity Act, 2003 besides misinterpreting the provision of the Act itself.

4.6. A generator is entitled to be declared as Captive Generating Plant as defined in clause (8) of section 2 of the Electricity Act, 2003 only if he satisfies, the Rule 3 of the Electricity Rules, 2005. It is to be noted that eventhough the petitioner has 100% ownership, the word “and” employed in between the two principal conditions prescribed in Rule 3 (1) of the Electricity Rules, 2005 is relevant to note. It is stated that in order to qualify as a captive generating plant and to have Open Access arrangement in terms of section 9 of the Electricity Act, 2003, the wheeling end company should hold minimum 26% ownership in the generating company and the wheeling end company should consume minimum 51% of the generated energy on an annual basis.

4.7. Wind Energy Generator (WEG), a Bio-Mass plant, a co-generation plant and a captive power plant, for wheeling of the energy generated to the wheeling end company, they are covered by section 9 and 42 of the Electricity Act, 2003, the Electricity Rules, 2005, TNERC Intra State Open Access Regulation, 2005, TNERC orders and approvals have been given in accordance with law. All the generating

companies which are wheeling their energy generated by their plants have to obey the above said statutory legal bindings including the petitioner.

4.8. While introducing the power cut by TANGEDCO during 2008, the Commission in its order dated 28-11-2008 in M.P.No.42 of 2008 in para (24) has stated “Therefore, we direct that the determination of demand and energy quota for wind energy captive users shall be the same as that of other captive users”. Based on the above, the Indian Wind Power Association and other Wind Energy Generators have filed a batch of writ petitions in the Hon’ble High Court of Madras and prayed to treat wind energy captive users as that of other captive users. Based on the request of TANGEDCO, the Hon’ble High Court of Madras has forwarded the batch cases to this Commission. After hearing, the Commission on 28-10-2009 has issued Suo Moto Proceeding No.1 of 2009 and the benefits are all implemented by TANGEDCO and availed by the Wind Energy Generators. It is to be noted that the above order was issued specifically for the wind captive users. In order to avail the benefit of treatment that the wind energy captive users shall be the same as that of other captive users, the petitioner was silent and had not raised any objection before this Commission or Hon’ble High Court of Madras or Hon’ble Appellate Tribunal for Electricity, but after availing the captive user benefit, now is objecting that they are not captive user.

4.9. There are three modes of export of energy permissible under the Electricity Act, 2003 and the rules / regulations made thereunder, viz, captive use, sale to the Distribution Licensee and third party sale. Each such mode is governed by a set of procedures prescribed by this Commission. It is not out of place to state that the

generators are having free hand to choose any one or two or all modes. In the case of the petitioner herein, it has been given approval for wheeling energy for captive use with banking facility with an option to encash the banked energy at the end of the year. In furtherance of the same, the petitioner and the respondent Board has executed agreements.

4.10. There are six modes to get energy by a person in India, which are as follows:-

- (a) Availing supply of energy from the distribution licensee.
- (b) Availing power from any other generator(s), power exchange(s) etc. (third party sale / purchase) using the network of the licensee.
- (c) Setting up power plant(s) and utilizes the energy generated from it for self-use within the premises without utilizing the network of the licensee.
- (d) Setting-up power plant(s) including WEGs elsewhere, either investing fully (or) ownership by way of investment in shares of the CGP, and wheeling the energy to the required destination using the network of the licensee.
- (e) Setting-up power plant(s) including WEGs elsewhere, either investing fully (or) ownership by way of investment in shares of the CGP and putting up line of its own to carry the energy to the desired destination (without using the network of the licensee)
- (f) Availing energy from any one or more or all sources aforesaid. It is not, and it cannot be, the case of the petitioner that it is covered under the third and / or fifth mode(s) aforesaid.

4.11. The approvals of EWAs relating to the cases on hand, in unequivocal terms, point that the same are meant for carrying energy from the place of generation to the place of utilization using the distribution network of the respondents, in terms of the TNERC's Intra-State Open Access Regulations, 2005 for captive use with banking facility and to encash the unutilized banked energy at the end of the year in terms of the Electricity Rules, 2005 and tariff orders issued by this Commission from time to time. The same could be evident from various clauses of approvals and the conditions governing the execution of EWAs. As stated already, clause 11 of the approval will vouch for applicability of the Electricity Rules, 2005 and it has to be read with the terms and conditions of the EWAs executed by the petitioner.

4.12. The petitioner while referring to the definition of "Captive Generating Plant" conveniently omitted to state the term "primarily" employed in clause (8) of section 2 of the Act, 2003 since because it is glaringly evident based on records and in fact a clear admission in unequivocal terms by the petitioner, that it has not utilized the energy generated from the WEGs primarily but only sparingly.

## **5. Findings of the Commission:-**

We have heard the arguments of both parties. The only question to be resolved in this petition is whether the arguments advanced by the learned counsel for the petitioner would justify to bring this case within the scope of review. The counsel for the review petitioner argued that there is a mistake of fact in the order of the Commission dated 03-11-2011. He further argued that as a 100% owner of his captive generating plant he could comply with provisions of section 2(8) and section 9 of the Act and he is not required to fulfill rule 3 of the Electricity Rules, 2005

prescribing the minimum consumption of 51% by the captive user. This is only an interpretation by the petitioner and not a mistake of fact in the order already passed by this Commission in M.P.No.21 of 2011 dated 03-11-2011. On going through the averments of the petitioner, it is clear that the instant case does not fall within the scope of review, since the petitioner has not brought out any mistake of fact, ignorance of any material fact or any error apparent on the fact of the record. Therefore, the review petition is dismissed.

#### **6. Appeal:-**

An appeal against this order shall lie 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 a copy of this order by the aggrieved person.

(Sd.....)  
**(G.Rajagopal)**  
**Member**

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

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission