

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

**PRESENT:-**

**Thiru S.Akshayakumar** .... **Chairman**

**and**

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

**M.P.No.37 of 2015**

1. The Chairman  
Tamil Nadu Electricity Board  
144, Anna Salai, Chennai – 600 002.
2. The Chief Engineer / Commercial  
Tamil Nadu Electricity Board  
144, Anna Salai, Chennai – 600 002.
3. The Chief Engineer / Distribution  
Coimbatore Region  
Tamil Nadu Electricity Board  
Tatabad, Coimbatore – 641 012.
4. The Superintending Engineer  
Coimbatore Electricity Distribution Circle (N)  
Tamil Nadu Electricity Board  
Tatabad, Coimbatore – 641 012.

... Petitioners / Appellants

Vs.

M/s.Sharadha Terry Products Ltd.  
Rep. by its Chairman & Managing Director  
Badrakaliamman Koil Road  
Nellithurai Post, Mettupalayam – 641 305  
Coimbatore District.

.... Respondent  
(V.Radhakrishnan, Senior Advocate  
for Kadarkarai, Advocate)

**Dates of hearing : 28-10-2015 & 13-11-2015**

**Date of order : 11-02-2016**

M/s. Sharadha Terry Products Ltd., filed W.P.No.17662 of 2010 in the High Court of Madras to issue a Writ of Certiorarified Mandamus challenging the Letter

No.SE/CEDC/N/AEEGL/AEII/F.M/s.Sharadha Terry/EHT/ D.1787/09 dated 05-12-2009 of Superintending Engineer/Coimbatore EDC /North and the letter of the Chief Engineer (Distribution), Coimbatore TNEB No.CE/Commt/EET/AEE1/F.Sharadha/ D.239/2010, dated 30-04-2010 in having refused the claim for refund of extension cost collected from the Company and to direct the said Respondents to refund the amount paid by the Petitioner towards Service Connection Charges of a sum of Rs.1,15,23,000/- together with the interest @ 15% per annum till date of payment. The Single Judge of the High Court allowed the said Writ Petition quashing the aforesaid letters of the Respondents in the said Writ Petition vide order dated 08-10-2010. The High Court further directed to refund the amount collected towards Service Connection Charges to the Petitioner company along with 6% interest. The Single Judge however made it clear that the said order will not absolve the company/M/s.Sharadha Terry Products Ltd. of its liability to pay the charges as may be specified by the Commission.

Aggrieved by the order of the Single Judge, the Respondents in the said Writ Petition namely, TNEB and others filed W.A.No.480 of 2011 before the Division Bench of the High Court. The Commission has also been impleaded as a Respondent in the said Writ Appeal vide orders of the Division Bench dated 10-11-2014 in M.P.No.1 of 2014 in the said Writ Appeal. The First Bench of the High Court in its order dated 16-09-2015 disposed of the said Writ Appeal inter-alia with a direction to the Commission to dispose of the matter uninfluenced by any of the observations made in the order of the Single Judge.

Pursuant to the orders of the Division Bench of the High Court, the Appellant in the said Writ Appeal namely, TNEB filed the present Miscellaneous Petition No.37 of 2015 before the Commission on 05-10-2015. M/s. Sharadha Terry Products Ltd.

filed its counter on 14-10-2015. The matter was posted for disposal of the Miscellaneous Petition on 28-10-2015. However, on the request of the Counsel for the Respondent Company, the matter was adjourned and was again listed for hearing on 13-11-2015.

The Commission upon perusing the above petition and the connected records and after hearing the submissions of the Petitioner passes the following order:-

### **ORDER**

#### **1 Prayer of the Petitioner in M.P.No.37 of 2015:-**

The Prayer of the Petitioner in M.P.No.37 of 2015 is to reject the request of M/s.Sharadha Terry Products Ltd. for refund of the extension of service charges collected from them for having extended service through 110 KV supply instead of through 33 K.V. Supply line.

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

2.1. In the year 2008, M/s.Sharadha Terry Products Ltd., HT SC No.529 applied for a maximum demand of 6000 KVA for their industry at SF No.948/1,2,947/2, Thekkampatty Village, Mettupalayam Taluk and requested to effect the supply at 110 KV supply and the application was registered on 15-05-2008. The estimate was evolved for extending supply from 110 KV network and sanction has been obtained. As per the sanction, a sum of Rs.7,32,000/- is chargeable to Board and Rs.1,15,23,000/- is chargeable to the consumer.

2.2. The load sanction was accorded vide BN/006/08-09/AEEGL/AEGLII/ F.M/s.Sharadha EHT/D1323/08, dated 24-09-2008 wherein the consumer was intimated to execute the agreement and pay the following amounts: Development

charges—Rs.21,00,000/-, Meter Caution Deposit – Rs.1,00,000/-, Service Connection Charges—Rs.1,15,23,000/-. The consumer has paid the above amount on 25-09-2008. The consumer has requested for refund of the above amount through his representation dated on 03-02-2009. In this regard, it was intimated to the consumer vide Lr.No.SE/CEDC/N/AEEGL/AEII/F.M/s.Sharadha Terry EHT/ D.1787/09, dated 05-12-2009 that the extension cost collected towards extension of supply at 110 KV is not refundable. Subsequently, instructions were issued vide Memo No.CE/CommI/EET/AEE1/F.TNERC/D.293/09, dated 13-07-2009 to refund the amount to the Respondent if any collected pursuant to the orders issued on 14-07-2008 and 19-09-2008 after evolving revised estimate as per the procedure then in vogue and after obtaining sanction from the competent authority. Based on that, revised estimate was evolved and amount refunded by way of CC Bill adjustment to HT Service Connection Nos.196, 229, 498 & 507 in Coimbatore/North EDC, who availed the supply in the eligible voltage level as prescribed by the Commission.

2.3. The estimate amount was not refunded to M/s.Sharadha Terry Products Ltd., HT SC No.529, since the supply was proposed to be effected from 110 KV as requested by the consumer instead of 33 KV which is the eligible supply voltage as prescribed by the Commission. Having received the above intimation M/s.Sharadha Terry Products Limited availed the service connection on 03-03-2010 at 110 KV without any objection.

2.4. While applying for the above new service, M/s.Sharadha Terry Products Ltd. were running another factory with HT supply at a demand of 1850 KVA at 22 KV in the neighbourhood area. The HT supply has been provided to M/s.Sharadha Terry

Products Limited, HT SC Nos.492 and 394 through 22 KV Kallar feeder off Mettupalayam SS. In view of their expansion programme, M/s.Sharadha Terry Products Limited applied for 6000 KVA and requested supply at 110 KV and the same was effected on 03-03-2010.

2.5. As per the Commission's Distribution Code 2004, the categories of supply have been mentioned as

Sl.No.	Demand	Voltage level
1	Below 5000 KVA	11 KV
2	5000 KVA and above	33 KV & above

At the time of receipt of M/s.Sharadha Terry application, there were five systems of voltage level in TNEB viz. 11 KV, 22 KV, 33 KV, 110 KV and 230 KV, which were considered for effecting HT/EHT supply to the applicants based on the demand requirements by the applicants.

2.6. To be more specific and in line with the TNERC Distribution Code, 2004, TANGEDCO has adopted the following procedure in effecting the EHT supply taking into account the techno commercial considerations of providing EHT supply in proportion to the demand requested by the consumer.

Sl.No.	Demand	Voltage level
1	Below 5000 KVA	11 KV or 22 KV based on availability of system voltage in the area
2	5000 KVA to 10000 KVA	33 KV
3	Above 10000 KVA	110 KV or 230 KV

2.7. The procedure has been framed and followed in TANGEDCO to accommodate the demand according to the current carrying capacity of the conductors, metering set arrangement, economical usage of distribution lines and

the cost benefit ratio etc. The above classification has been issued taken into account the next available high system voltages of 110 KV & 230 KV which has not been clearly mentioned in the TNERC classification also to restrict those consumers with low demand i.e. 5000 KVA who are seeking supply at higher voltages like 110 KV and 230 KV. Accordingly, the Commission has issued an amendment on 17-02-2012 regarding categories of supply (26) as follows:-

*“26 (1) (e) The consumer shall be provided supply at 33 KV for a demand exceeding 3 MVA and upto 10 MVA if the area of supply is fed through 11 KV system and if the area of supply is fed through 22 KV system, supply at 33 KV shall be provided for a demand exceeding 5 MVA and upto 10 MVA.*

*x x x x x*

*“26 (3) If the consumer opts for higher levels of voltages for demands less than that specified, the consumer shall bear the extra expenses to be incurred by the licensee to provide supply at such higher voltages”*

2.8. In the present case, M/s.Sharadha Terry Products Limited, HT SC No. 529 had applied for 6000 KVA at 110 KV where as their demand required supply only at 33 KV. Since the consumer has applied for availing supply at 110 KV, the adequacy of the 110 KV line passing nearby area (Mettupalayam-Pykara) has been discussed in the letter dated 21-05-2008. Based on the above requirement, the estimate has been evolved and M/s.Sharadha Terry Products Limited has been informed to pay the amount. Accordingly the amount has been paid by them and availed the supply at 110 KV side on 03-03-2010.

2.9. There are no 33 KV or 66 KV network in the vicinity but if the consumer has requested for 33 KV supply, TNEB would have made arrangements for introducing the 33 KV source in nearby sub-stations and extended supply from that source as the way leave for the same is existing through 22 KV corridor.

2.10. M/s.Sharadha Terry Products Limited has been enjoying the supply at 110 KV which is at highest level of performance, with a minimum interruption and high power quality requirement for the last 5 years. In view of the above advantages, M/s.Sharadha Terry Products Limited had subsequently requested for converting their old service HT SC No.492 which was at 22 KV to this 110 KV system during 2014 by disconnecting and dismantling 22 KV HT service connection and the same was effected on 17-07-2014. As the Petitioner enjoys the facility of added benefits by availing 110 KV supply, it is justifiable to collect the extension cost of the 110 KV line from the Respondent which is in line with the TNERC guidelines.

**3. Contentions of the Respondent M/s.Sharadha Terry Products Ltd in their counter affidavit dated 14-10-2015.:-**

3.1. The Respondent company is engaged in manufacture of Terry products and it is 100% export oriented unit. On 15-02-2008, the company made an application to the Superintending Engineer, CDEC(North) for grant of power supply of 6000 KVA for power and lighting of the company. As there was no 33 KV or 66 KV network available in the nearby area of the company's unit on advice requested to grant power supply from 110 KV sub-station. The Superintending Engineer, Coimbatore EDC(North) while forwarding his report and estimate for approval to higher authorities in his Letter No.SE/CEDC/N/CBE/AEEGI/AEGII-II/F.EHT/D762/08, dated 21-05-2008 addressed to the Chief Engineer Distribution, Coimbatore that there are no 33 KV or 66 KV network available in the nearby area of the proposed industry and supply has to be extended from 110 KV network.

3.2. The estimate and feasibility report was forwarded by the Chief Engineer (Distribution), Coimbatore to the Chief Engineer (Commercial) in

L.No.CE/D/CBE/OLG/F.HT.Gen/D.428/08, dated 30-05-2008. As per this feasibility report and estimate, total cost of the work was estimated at Rs.1,69,63,620/- and the amount chargeable to consumer was Rs.12,82,860/- and on Board side, it was Rs.1,56,80,760/-.

3.3. While the proposal sent by the Chief Engineer (Distribution), Coimbatore was pending in the Head Quarters office, the Chairman Tamil Nadu Electricity Board held a Review Meeting on 04-07-2008 with all Chief Engineers (Distribution). It appears that in that meeting one of the decisions made was to recover charges on stipulation in Regulations 44 & 45 of the Tamil Nadu Electricity Distribution Code and as discussed in the review meeting, it has to be followed. The minutes of the above review meeting was, in turn, communicated by the Chief Engineer (Distribution), Coimbatore to all Superintending Engineers of his region.

3.4. Subsequently, the Chief Engineer (Commercial) in his letter No.CE/Comm/EET/AEE1/F-SARADHA/C.8/08, dated 09-07-2008 requested the Chief Engineer (Distribution), Coimbatore to revise the estimate for extension of EHT supply to the company's unit as per Regulation 44 & 45 (1) Tamil Nadu Electricity Distribution Code and send the same to the Head Quarters office for further action. Accordingly, the Chief Engineer (Distribution), Coimbatore revised the report and estimate as per Tamil Nadu Electricity Distribution Code 44 & 45. The revised report was forwarded by the Chief Engineer (Distribution), Coimbatore to the Chief Engineer (Commercial) in his letter dated 06-08-2008. In this revised report, estimate amount gross and net was given as Rs.122.44 lakhs chargeable to consumer. Thereafter, the Chairman, TNEB in his Proceedings (Per.) B.P.(CH)

No.415, dated 18-09-2008 approved the report and estimate. The above said approval was granted subject to 15 conditions specified therein. The 1<sup>st</sup> condition is:

1. The extension cost upto the metering Board is chargeable to the Applicant as per TNERC Regulations 44 & 45.

Condition No.15 states that the expenditure of Rs.1,22,55,000/- gross and net chargeable under the following heads:

- (a) Board side Part-I Rs.7,32,000/-
- (b) Consumer side Part-II Rs.1,15,23,000/-

3.5. While so, the Commission came to know about the enforcement of Regulations 44 and 45 of Tamil Nadu Electricity Distribution Code by the Petitioners herein and hence passed an order on 19-09-2008 staying the recovery expenses under Regulations 44 & 45 of Tamil Nadu Electricity Distribution Code. This order was passed by the Commission in TNERC/Legal/AD(L)/F.Show cause/D.No.1296/2008, dated 19-09-2008. On coming to know the stay order of the Commission dated 19-09-2008, the Chief Engineer (Commercial) in his Memo No.CE/Comm/EET/AEE1/F.TNERC/D.159/08, dated 19-09-2008 informed all the Chief Engineers (Distribution) that the recovery charges on stipulation as per Regulations 44 & 45 and cost of extending supply to all HT/LTCT and all industrial services to be collected as per TNERC/Electricity Distribution Code to be kept in abeyance. This letter of CE/Commercial was received by the office of the Superintending Engineer, Coimbatore EDC (North) on 22-09-2008. Despite this direction, the Superintending Engineer, Coimbatore EDC (North), in letter No.BN.006/08-09/AEE-GL/AEGLII/F.M/s.Sharadha EHT/D 1323/08, dated 22-09-2008 addressed to the company, directed to pay the service connection charges to the tune of Rs.1,15,23,000/-. At that time, the Company was not aware of the order of stay granted by the Commission on 19-07-2008. Hence, the

Respondent remitted the said amount in the office of the Superintending Engineer, Coimbatore EDC (North) on 25-09-2008.

3.6. Subsequently, the company came to know of the stay granted by the Commission on 19-09-2008 and subsequent orders passed on the above subject. In those circumstances, by letter dated 03-02-2009 requested the Superintending Engineer, Coimbatore EDC (North) to refund the excess service connection charges collected from the company under Regulations 44 & 45 of the Tamil Nadu Electricity Distribution Code. The said request was ultimately rejected by the Chief Engineer (Commercial) in Memo No.CE/Comml/EET/AEE1/F.TNERC/D.293/09, dated 13-07-2009. This rejection was again communicated by the Superintending Engineer, Coimbatore EDC (North) in his letter dated 05-12-2009.

3.7. Aggrieved by these two orders rejecting its claim, the Company filed W.P.No.17662/2010 before the High Court, Madras. The learned single Judge by order dated 08-10-2010 quashed the above said two impugned orders and directed the TNEB to refund the amount collected from the writ petitioner towards service connection charges, a sum of Rs.1,15,23,000/- within a period of 4 weeks with interest at 6% p.a.

3.8. Aggrieved by the order of the learned Single Judge, the TNEB filed Writ Appeal No.480/2011. During the pendency of the Writ Appeal, the Commission was impleaded as the 2<sup>nd</sup> Respondent in the Writ Appeal by order dated 10-11-2014 in M.P.No.1 of 2014. Finally on 16-09-2015, the Division Bench of the High Court

disposed of the Writ Appeal with the direction to the Commission. The relevant portion of order is as under:-

*“2. It is agreed that the appeal be disposed of in the following terms:-*

- (1) The impugned order emanates from an interim order passed by the Respondent No.2/Tamil Nadu Electricity Regulatory Commission and the learned counsel for the Commission states that every endeavour would be made to conclude the main proceedings within a period of two months.*
- (2) In so far as the case of the Respondent No.1 / original Petitioner in the Writ Petition, they have paid the amount already and have thus, sought refund. A specific order of refund has not been passed. The learned Advocate General appearing for the Appellants states that they will move an application for clarification of the interim order before the Commission, which would facilitate early disposal qua the case of Respondent No.1.*
- (3) The application will be filed within a week's time and the Respondent may file their response to the same within a week's time thereafter and the Commission shall dispose of the application within a maximum period of four weeks from today.*
- (4) In case of the favourable view being taken by the Commission, the amount liable to be refunded shall be so refunded to Respondent No.1 within a maximum period of 15 days thereafter. This would of course be subject to the rights of the Appellants to assail the order, if so advised, but that would not in any manner affect the payment of the amount to Respondent No.1 in that eventuality as Respondent No.1 has been without the amount for about eight years and even succeeded before the learned single Judge.*
- (5) The adjudication by the Commission would be uninfluenced by any of the observations made in the impugned order.”*

3.9. The Petitioners in the above M.P. failed to state that the direction to pay Rs.1,15,23,000/- was based on revised estimate prepared applying Regulations 44 & 45 of the Tamil Nadu Electricity Distribution Code. It is also relevant to state that initially the Company was directed to pay only a sum of Rs.12,82,860/- as per the letter of the CE/Dist/CBE, dated 30-05-2008. When the Chief Engineer

(Commercial) specifically directed in his letter dated 09-07-2008, the Chief Engineer, Coimbatore EDC (North) revised the estimate and report by applying Regulations 44 and 45 of the Tamil Nadu Electricity Distribution Code. Only in this report, it has been asked to pay a sum of Rs.1,15,23,000/- as charges for extension of service. Based on the revised report approval was granted by the Chairman, TNEB in proceedings dated 18-09-2008. This order also shows that the extension cost upto the metering Board is chargeable to applicant as per Regulations 44 & 45 of the Tamil Nadu Electricity Distribution Code.

3.10. The averment that the Board has refunded the amounts via C.C. bill adjustment to certain HT consumers in Coimbatore/North/Electricity Distribution Circle, who availed the supply in eligible voltage level as prescribed by TNERC cannot be countenanced. This would also equally apply to the case of the Respondent herein. As stated supra, there are no 33 KV or 66 KV sub-station in the vicinity. The Respondent herein had applied for 6000 KVA power under Regulation 26 (d) of Tamil Nadu Electricity Distribution Code. The consumer shall avail supply at 33 KV and above when the demand is 5 MVA and above. In the instant case, the request is for 6 MVA. Therefore, this Respondent is eligible to avail supply at 33 KV. However, the fact remains there is no 33 KV sub-station in the area. The only available option is 110 KV Pykara-Mettupalayam, Network. Hence, the Respondent had availed supply from the eligible supply voltage prescribed by the Commission. Therefore, the contention of the Petitioners herein that the estimate amount was not refunded since supply was proposed to be effected from 110 KV as requested by consumer instead of 33 KV which is eligible supply voltage prescribed by the Commission is factually incorrect and is liable to be rejected as untenable. As per

Regulation 26 (d), this Respondent is eligible to avail supply from 33 KV and above sub-station for 6 MVA since there is no 33 KV SS, in the nearby area of the Respondent unit, supply was given by the Board in accordance with their feasibility report from 110 KV Pykara-Mettupalayam feeder. Therefore, the reason given for the rejection of the refund is invented for the first time. However, the fact remains that the estimate and cost chargeable to consumer was revised by implementing Regulations 44 & 45 of Electricity Distribution Code and not that supply was effected through 110 KV sub-station.

3.11. Under section 46 of the Electricity Act, 2003, the State Regulatory Commission may by regulation, authorize the distribution licensee to charge from a consumer any expenses reasonably incurred in providing any electric line or plant used for the purpose of giving that supply. In the instant case, the admitted fact is that the Regulations 44 and 45 of Electricity Distribution Code, cannot be enforced, since the Commission did not grant permission when the impugned orders were passed for revising the estimate as per Regulations 44 and 45 of Electricity Distribution Code. Only on the basis of this factual matrix, the Commission on 19-09-2008 passed orders of stay. Therefore, the fact remains that when this Respondent was called upon to pay the extension of service charges as per Regulations 44 and 45 of the Electricity Distribution Code, the Commission did not authorize the Board to do so. Therefore, the demand for refund made by the Company is legally valid and the same is in accordance with the law.

3.12. The contention that the Respondent Company had availed supply at 110 KV without any objection is without any substance and liable to be rejected. For demand

of 6 MVA, the Respondent is eligible to avail supply from above 33 KV sub-station. Since there is no 33 KV sub-station in the nearby area, supply was given to this Respondent as per their own feasibility report from nearest 110 KV Pykara-Mettupalayam Feeder.

3.13. Originally, this Respondent had applied for supply of power for 2000 KVA finally sanctioned demand was 1350 KVA in S.C. 181. In the year 2005, this Respondent installed a captive generation plant (HFO) of 5.225 MW. Thereafter, this Respondent surrendered the power supply in S.C. 181 on 23-07-2007. However, later in February 2008, this Respondent decided to revert back to HT Power supply from TNEB.

3.14. Regulation 26 of the Electricity Distribution Code categories supply of electricity. Particularly Regulation 26 (d) provides that the consumer shall avail supply at 33 KV and above, when the demand is 5 MVA and above. In the instant case, admittedly the demand is 6 MVA. Therefore, as per this provision, the Respondent is entitled to avail supply at above 33 KV sub-station. Therefore, the stand of TANGEDCO that in so far as demand of 5000 KVA to 10000 KVA has to be effected from 33 KV sub-station is contrary to the Distribution Code. Therefore, this illegal procedure without approval of the Commission cannot be a ground to reject the request of the Respondent for refund.

3.15. The procedure adopted by the Board is contrary to statutory provision. The amendment to Regulation 26 of the Electricity Distribution Code was made only on

17-02-2012, long after supply was effected to this Respondent on 03-03-2010. Therefore, the amended provision has no application to this Respondent.

3.16. Having revised the estimate and collected the cost of extension of service to the tune of Rs.1,15,23,000/- from the Company by applying Regulations 44 and 45 of the Electricity Distribution Code instead of the original estimated amount of Rs.12,82,860/- the Petitioners herein are stopped from giving new reason that the Respondent has availed supply of power at 110 KV level. This is totally a different and newly invented reason for the purpose to reject the plea of the Respondent Company for refund. The averment that, had the consumer requested for 33 KV supply, they would have made arrangements for introducing the 33 KV source in nearby substation is a deliberate misrepresentation made with ulterior motive to defeat the rights of the Respondent Company and therefore the same is liable to be rejected.

3.17. The Commission had already given a direction on 22-05-2009 directing to withdraw earlier instructions enforcing Regulations 44 and 45 of Electricity Distribution Code and further directed to refund the money collected pursuant to the orders to the consumers and was directed to send a report to the Commission in L.No.TNERC/D(E)/AD/SA/F.D.Code/D.No.713/09, dated 22-05-2009. In this letter, there is no exemption given in respect of cases for which supply was given from 110 KV sub-station. Therefore, as per the letter of the Commission, the Petitioners herein are bound to refund the extension of service charges collected from the Respondent.

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

4.1. M/s. Sharadha Terry Products Ltd. made an application to the Superintending Engineer, Coimbatore Electricity Distribution Circle (North) requesting for supply of power of 6000 KVA for its factory at SF No. 946/1 etc. at Thekkampatti Village which has been duly registered by the Superintending Engineer with Registration No.BN0061 dated 15-05-2008. By his letter No. SE/CEDC/N/CBE/AEEGI/AEG II-II/F.EHT/D762/08, dated 21-05-2008, the Superintending Engineer furnished to the Chief Engineer (Distribution), Coimbatore a feasibility report and estimate.

4.2. Further, in the said letter, the Superintending Engineer has proposed an estimate that covered the total cost of Rs.2,92,56,106/- (Rupees Two Crores Ninety Two Lakhs Fifty Six Thousand and One Hundred and Six only) as Gross and Nett and Rs.17,81,708/- (Rupees Seventeen Lakhs Eighty One Thousand Seven Hundred and Eight only) is chargeable to party.

4.3. Thereafter the Chief Engineer, Coimbatore region has sent a letter dated 30-05-2008 to the Chief Engineer (Commercial) at Headquarters of the TNEB at Chennai wherein it has been clearly and unambiguously stated that the estimated cost works out to Rs.1,69,63,620/- (Gross and Nett) and Rs.12,82,860/- as chargeable to the applicant. Stating thus, the Chief Engineer, Coimbatore region has requested the Chief Engineer (Commercial) to arrange to accord administrative load sanction and estimate sanction for extension of EHT supply to M/s.Sharadha Terry Products Pvt Ltd. for a maximum demand of 6000 KVA. While so, a Review Meeting of all the Chief Engineers (Distribution) was held by the Chairman/TNEB on 04-07-2008, consequent to which all the Chief Engineers and Superintending

Engineers have been instructed to collect extension cost as per the procedure recommended by TNEB in their letter dated 14-08-2008 in anticipation of approval of TNERC.

The said letter of TNEB dated 14-08-2008 was violative of the Regulations of Tamil Nadu Electricity Regulatory Commission as stated below:-

- a) Collection of extension cost and strengthening cost for the LT line / HT line /EHT line constitutes violation of Regulation 45 (1) (ii) of Tamil Nadu Electricity Distribution Code.
- b) Collection of the proportionate cost of distribution transformer / power transformer is a violation of Regulation 45 (1) (ii) of Tamil Nadu Electricity Distribution Code.
- c) Collection of cost of new breaker and current transformers and potential transformers is a violation of Regulation 45 (1) (ii) of Tamil Nadu Electricity Distribution Code.

4.4. The power to prescribe charges recoverable from a person requiring supply of electricity is vested in the TNERC under section 46 of the Electricity Act, 2003 and the TNEB has no jurisdiction to order collection of the charges ***in anticipation of the approval of*** the TNERC.

Taking note of the above violations, the Commission made an order of stay of the said letter of the Chief Engineer i.e. Letter No.CE/Commercial/EET/AW1/F.TNERC/D.120/08, dated 14-08-2008 vide order of the Commission dated 19-09-2008, directing the TNEB to forward to the Commission a copy of the instructions of the TNEB staying their earlier orders.

4.5. It is observed, in this connection, that in the Minutes of Review Meeting by the Chairman TNEB with the Chief Engineer's (Distribution) on 04-07-2008 under the head "General" the following were inter-alia minuted:-

*“The recovery of charges on stipulation in 44 and 45 and as discussed in the review meeting has to be followed.”*

*“The cost of extending supply to all HT, LT/CT and all industrial services to be collected, as per TNERC’s Distribution Code.”*

As stated above, the Commission stayed the letter of TNEB dated 14-08-2008 which sought to make collection of extension cost as per the above Minutes since such a procedure was violative of sub-regulation(1) of regulation 45 and regulation 46 of the Tamil Nadu Electricity Distribution Code. The Tamil Nadu Electricity Board vide its Memo No.CE/Commercial/EET/AL1/F.TNERC/D.159 of 2008 dated 19-09-2008 has ordered that the said Minutes under heading “General” may be kept in abeyance. However, by communication dated 22-05-2009, the Commission again directed the TNEB to withdraw the instructions issued to its field engineers vide its letter No.SE/RE&I(D)/EE/RE/A2/F.Review Meeting/D.No.1063/2008,dated 14-07-2008 regarding collection of cost for extending the supply to all HT, LT/CT and all industrial services. The TNEB was further directed therein to refund the money collected pursuant to the order to the consumers. The above directions of the Commission were acted upon by the TNEB vide its Memo No. CE/Commercial/EET/AW1/F.TNERC/D.293/09, dated 13-07-2009 addressed to all the Chief Engineers (Distribution). The said Memo read as follows:-

*“In the letter (iii) cited above Hon’ble TNERC has directed TNEB to withdraw the instructions issued to field engineers vide letter dated 14-07-2008 regarding collection of cost for extending supply to all HT, LT/CT and industrial services. Hence, the instructions issued under the reference (i) and procedure communicated in reference (ii) cited above regarding collection of extension cost are hereby withdrawn.*

*Action may be taken to refund the amount to the applicants / consumers if any collected pursuant to the orders (i) and (ii) cited above, after evolving revised estimates as per the procedure now in vogue and obtaining sanction from the competent authority”.*

In view of the said Memo dated 13-07-2009 of the TNEB, the proceedings initiated by the Commission were closed.

4.6. In the meanwhile, the Superintending Engineer, pursuant to the instructions of the Chairman (which were subsequently withdrawn) has raised a revised demand purportedly based on Regulation 44 and 45 of the Tamil Nadu Electricity Distribution Code, requesting M/s.Sharadha Terry Products Pvt Ltd., to pay a sum of Rs.1,15,23,000/-. Allegedly the Respondent also remitted the amount without knowing the fact that the instructions, based on which the amount payable by them has been estimated, were already stayed by the Commission. Thereafter, having come to know that the said instructions were stayed by the Commission M/s.Sharadha Terry Products Pvt Ltd. requested the Licensee to refund the amount collected in excess of Rs.12,82,860/- which request was rejected by the Licensee. Challenging the action of the Licensee in having rejected the request for refund of the excess amount collected by the Licensee towards extension cost, M/s.Sharadha Terry Products Pvt Ltd. filed W.P.No.17622 of 2010 in the Madras High Court. The Madras High Court allowed the petition for the reason stated in its order dated 08-10-2010 directing the Licensee inter-alia to refund the amount collected from the Petitioner towards service connection charges of a sum of Rs.1,15,23,000/- with in a period of four week from the date of receipt of a copy of this order with interest of 6% per annum. The court further ordered that this order will not absolve the Petitioner of its liability to pay the charges as may be specified by the Commission and therefore, the Respondents are at liberty to adjust the amount of liability of the Petitioner while making the above payment.

4.7. Aggrieved, Writ Appeal No.480 of 2011 was filed by the TNEB before the Division Bench of the Madras High Court wherein the Commission has also been impleaded by the Court as a Respondent. Ultimately the Writ Appeal No. 480 of 2011 came to be disposed of by the Division Bench on 16-09-2015 inter-alia as ordered below:-

*“It is agreed that the appeal be disposed of in the following terms:-  
x x x x x*

*“(2) In so far as the case of respondent No.1 / original petitioner in the writ petition, they have paid the amount already and have thus, sought refund. A specific order of refund has not been passed. The learned Advocate General appearing for the appellants states that they will move an application for clarification of the interim order before the Commission, which would facilitate early disposal qua the case of respondent No.1.  
x x x x x*

*“(4) In case of favourable view being taken by the Commission, the amount liable to be refunded shall be so refunded to respondent No.1 within a maximum period of 15 days thereafter. This would of course be subject to the rights of the appellants to assail the order, if so advised, but that would not in any manner affect the payment of the amount to respondent No.1 in that eventuality as respondent No.1 been without the amount for about eight years and even succeeded before the learned Single Judge.*

*(5) The adjudication by the Commission would be uninfluenced by any of the observations made in the impugned order.”*

4.8. The present M.P.No.37 of 2015 was filed by the Chairman, TNEB and others pursuant to the submission made by the Advocate General before the First Bench of the Madras High Court on behalf of the Petitioners herein who were Appellants in the said W.A. with the above prayer to reject the request of M/s.Sharadha Terry Products Pvt Ltd. for refund of the extension of service charges collected from them for having extended service through 110 KV supply instead of 33 KV supply line.

4.9. The Licensee argued that M/s.Sharadha Terry Products Pvt Ltd.is entitled to avail supply only at 33 KV and since supply was given at 110 KV level the amount

paid by them towards extension cost is not refundable. M/s.Sharadha Terry Products Pvt Ltd. availed the service connection at 110 KV without any objection. As per the Commission's Distribution Code, 2004, service for 5000 KVA and above need to be effected at 33 KV and above. At the time of receipt of application from M/s.Sharadha Terry Products Pvt Ltd., there were 5 systems of voltage level namely, 11 KV, 22 KV, 33 KV, 110 KV, and 230 KV in line with TNERC Distribution Code. TANGEDCO adopted the following procedure in effecting EHT supply taking into account the techno commercial consideration of providing EHT supply in proportion to the demand requested by the consumer.

Sl.No.	Demand	Voltage level
1	Below 5000 KVA	11 KV or 22 KV based on availability of system voltage in the area
2	5000 KVA to 10000 KVA	33 KV
3	Above 10000 KVA	110 KV or 230 KV

4.10. As averred by the Licensee, the above classification has been issued taking into account the next available high system voltage and 110 KV and 230 KV which has not been clearly mentioned in the Distribution Code to restrict those consumers with low demand i.e. 5000 KVA who are seeking supply at higher voltages like 110 KV and 230 KV. The Commission has issued an amendment on 17-02-2012 regarding the categories of supply as follows:-

*“26 (1) (e) The consumer shall be provided supply at 33 KV for a demand exceeding 3 MVA and upto 10 MVA if the area of supply is fed through 11 KV system and if the area of supply is fed through 22 KV system, supply at 33 KV shall be provided for a demand exceeding 5 MVA and upto 10 MVA.*

*x x x x x*

*“26 (3) If the consumer opts for higher levels of voltages for demands less than that specified, the consumer shall bear the extra expenses to be incurred by the licensee to provide supply at such higher voltages”*

4.11. The Licensee has averred that there are no 33 KV or 66 KV network in the vicinity but if the consumer has requested for 33 KV supply, the TNEB would have made arrangements for introducing the 33 KV source in nearby sub-stations and extended supply from that source as the way to leave for the same is exceeding through 22 KV corridor.

4.12. Per contra M/s.Sharadha Terry Products Pvt Ltd. has averred that the Superintending Engineer, Coimbatore EDC (North) while forwarding his report and estimate for approval to higher authorities in his letter dated 21-05-2008 has stated that there are no 33 KV or 66 KV network available in the nearby area of the proposed industry and supply has to be extended from 110 KV network.

4.13. As per the feasibility report and estimate of the Chief Engineer (Distribution), Coimbatore forwarded to the Chief Engineer (Commercial), the total cost of work was estimated at Rs.1,69,63,620/- and the amount chargeable to the consumer was Rs.12,82,860/- and on the Board side, it was Rs.1,56,86,760/-. During the pendency of the proposal of the Chief Engineer (Distribution), Coimbatore at the Head Quarters, following decisions of the Review Meeting to recover charges on stipulation and Regulation 44 and 45 of the Distribution Code, the Chief Engineer (Commercial) in his letter dated 09-07-2008 requested the Chief Engineer (Distribution), Coimbatore to revise the estimate of extension of EHT supply consequent to which BP (CH) No.415 dated 18-09-2008 was passed with the 1<sup>st</sup> condition that the extension cost upto the metering feeder is chargeable to the applicant as per Tamil Nadu Electricity Regulatory Commission's Regulations 44 and 45 and 15<sup>th</sup> condition stating (a) the Board side expenditure Part I Rs.7,32,000/-

and (b) consumer side expenditure Part II Rs.1,15,23,000/-. M/s.Sharadha Terry Products Pvt Ltd. further averred that they are not aware of the stay granted by the Commission on the instructions of the Licensee and on coming to know the stay order requested the Superintending Engineer, Coimbatore EDC (North) to refund the excess service connection charges collected from the company under Regulations 44 and 45 of the Distribution Code and that the said request was rejected. It was further averred that the contention that the supply has been availed at 110 KV without any objection is without substance and liable to be rejected.

4.14. The Senior Counsel appearing for M/s.Sharadha Terry Products Pvt Ltd. has argued that Regulation 26 (d) as it was on the date of the application provided that the consumer can avail supply at 33 KV and above when the demand is 5 MVA and above and since the consumer's demand was 6 MVA, there is nothing wrong in availing supply at lines above 33 KV, signifying that effecting the supply at 110 KV was in order and it will not entitle the Licensee to collect any excess amount.

4.15. The Senior Counsel further argued that the averment of the Licensee that, had the applicant requested supply at 33 KV, TNEB would have made arrangements for introducing 33 KV source in nearby sub-stations and extended supply from that source is an afterthought in view of the provisions of the Distribution Code existed at the crucial point of time. The Commission finds force in the above argument. The Senior Counsel further highlighted the fact that amendments were issued to Electricity Distribution Code by introducing Regulation 26 (i) (e ) and 26 (3) only in the year 2012 (with effect from 21-03-2012) which cannot have retrospective operation.

4.16. In view of the above position, the point for consideration is whether the extension cost collected from the applicant is justified for the sole reason that the supply was effected to him at 110 KV level. It is pertinent to point out that the applicant made the request for supply of 6000 KVA and admittedly there was no 22 KV or 33 KV lines in the vicinity and only 110 KV of Pykara-Mettupalayam feeder line alone was available. The specific statement of the Superintending Engineer, CEDC (North) in the feasibility report and estimate is as below:-

*“There are no 33 KV and 66 KV network available in the nearby area of the proposed industry, and so the supply has to be extended from 110 KV network. The supply to the EHT service is proposed to be extended on “T” off 110 KV Pykara-Mettupalayam feeder radially fed from Pykara power house. The existing feeder capacity is adequate for effecting this maximum demand of 6000 KVA. The proposed metering point is 20 meters from main gate”.*

4.17. Again it is admitted fact that a sum of Rs.17,81,708/- alone has been estimated to be charged to the party by the Superintending Engineer, CEDC (North). which amount was further reduced by the Chief Engineer, Coimbatore region in the letter to the Chief Engineer (Commercial) at Chennai as Rs.12,82,860/-. Further by virtue of the stay of the instructions issued by the Board, with regard to the collection of extension cost and strengthening cost for the LT line / HT line / EHT line viewing to be violation of Regulation 45 (1) (ii) of the Distribution Code, the said instructions could not have been applied in the case of the applicant and thus the conditions stipulated in this regard in the Board BP(CH) No.415 dated 18-09-2008 are not legally tenable. Again, the Commission cannot overlook the legal submission that the amendments to Regulation 26 of the Distribution Code were made only in the year 2012 and hence the same would not be applicable to the case of the applicant.

4.18. Thus in view of the facts and circumstances of the case and for the reasons stated above, the Commission finds that the prayer of the Petitioner in the above M.P. to reject the claims of M/s.Sharadha Terry Products Pvt Ltd. is not acceptable and therefore the Commission orders the Licensee to refund the extension cost collected from the applicant which is in excess of the amount originally proposed by the Superintending Engineer, Coimbatore (North) since the excess amount was charged for the reason of effecting supply at 110 KV in the absence of availability of 33 KV or 66 KV in the vicinity of the applicant industry.

4.19. The excess amount so calculated has to be refunded to M/s.Sharadha Terry Products Pvt Ltd. along with interest at 6% per annum within a period of 15 days in view of the orders of the First Bench of the Madras High Court dated 16-09-2015 in W.A. No. 480 of 2011.

With the above directions, M.P.No.37 of 2015 is disposed off.

#### **5. 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.Akshayakumar)**  
**Chairman**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission