

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**

I.A. No.1 of 2014
in
M.P.No.28 of 2014
and
M.P.No.28 of 2014

Union of India
Represented through
The Chief Electrical Distribution Engineer
Southern Railway
7th Floor, NGO Annex
Park Town
Chennai – 600 003.

... **Petitioner**

(Thiru V.Radhakrishnan, Senior Advocate
for Tmt.R.Sathyabama, Counsel on Record)

Vs.

1. Tamil Nadu Generation and Distribution Corporation
(a subsidiary of Tamil Nadu Electricity Board)
Anna Salai, Chennai - 600 002. rep. by its Chairman.
2. The Director (Finance)
Tamilnadu Generation and Distribution Corporation
Formerly Tamil Nadu Electricity Board
NPKRR Maligai, No.144, Anna Salai
Chennai – 600 002.
3. The Chief Financial Controller / Revenue
Tamilnadu Generation and Distribution Corporation
Formerly Tamil Nadu Electricity Board
NPKRR Maligai, No.144, Anna Salai
Chennai – 600 002.

.... **Respondents**

Dates of hearing : 21-07-2014, 29-12-2014, 13-01-2015,
27-04-2015, 05-10-2015, 28-10-2015
and 13-11-2015

Date of order : 31-03-2016

The M.P.No.28 of 2014 and I.A. No.1 of 2014 filed by the Petitioner came up for final 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.28 of 2014:-

The Prayer of the Petitioner in M.P.No.28 of 2014 is to

- (i) Order a suitable amendment to 5 (2) of the Tamil Nadu Electricity Supply Code by adding a proviso exempting Railways from paying double rate for any exceeded demand for reasons attributable to TANGEDCO.
- (ii) amend the Special conditions of tariff for Railway Traction (HT-1B) that the Recorded MD arising at a Traction sub-station during feed extension towards the adjacent traction sub-station due to supply failure at the latter due to reasons attributable to the supply authority viz. TANGEDCO / TANTRANSCO shall be ignored for billing purpose in the tariff orders of the Commission dated 31-07-2010, 01-04-2012 and 20-06-2013.
- (iii) to quash the impugned letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013 passed by the 3rd Respondent, namely, the Chief Financial Controller / Revenue, Tamil Nadu Generation and Distribution Corporation and consequently direct all the Superintending Engineers of TANGEDCO not to impose any charges pursuant to the aforesaid impugned letter and direct those Superintending Engineers of TANGEDCO to refund / adjust the MD charge and

excess MD surcharge amounts that have been already collected, and pass such suitable orders as may be deemed fit and proper in the circumstances of the case.

Prayer of the Petitioner in I.A.No.1 of 2014:-

The Prayer of the Petitioner in I.A.No.1 of 2014 is to

- (i) pass an order of interim stay of the operation of the impugned Letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013 issued by the 3rd Respondent, Chief Financial Controller / Revenue, TANGEDCO pending disposal of this petition.,
- (ii) an order of interim injunction be passed against the Respondent TANGEDCO restraining them from imposing any charge pursuant to the aforesaid impugned Letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013 and not to collect any MD surcharge that have been already imposed, from any of the sub-stations of the Southern Railway, pending disposal of this petition.

2. Contentions of the Petitioner:-

2.1. The electrical energy for running the passenger trains and goods trains is drawn from the overhead lines through the sliding contact mechanism called "Pantograph". The said power supply for Railway Traction is availed from the 110 KV grid of Tamil Nadu Generation and Distribution Corporation (TANGEDCO), a Subsidiary of Tamil Nadu Electricity Board (TNEB) and stepped down to 25 kV at the Railway Traction Sub-station, owned and operated by Railway, fed to the overhead lines installed above the Railway Tracks. 25 kV AC Electric Traction is in existence in Tamil Nadu from 1965. With the progressive electrification of Railway lines over

the years electric traction is extended to all the six divisions of Southern Railway, namely, Chennai, Salem, Thiruchirapalli, Madurai, Palakkad and Thiruvananthapuram Divisions. Out of the said six divisions, except Palakkad division, all the other five divisions avail the power supply for electric traction from Tamil Nadu Generation and Distribution Corporation, through 23 traction sub-stations owned and operated by Southern Railway. Every traction sub-station feeds to a tract section of about 40 Km to 60 Km (20 to 30 Km on either side).

2.2. Since power supply for Railway Traction is taken across two phases out of three phases, (namely R, Y and B) of the supply system, power supply is availed cyclically from the three phases at the continuous traction sub-stations such that the load on the Grid is balanced across the three phases. Hence in order to have electrical isolation between the two sections of tracks fed by adjacent traction sub-stations, to prevent short circuiting of two phases, a small dead section named “Neutral Section” is created in the line between the two sections of tracks fed by adjacent traction sub-stations. This neutral section is controlled by a remote controlled switch, called “Bridging Interrupter” to facilitate extension of power supply from one sub-station feeding zone to adjacent sub-station feeding zone during power failures in any one of the zone to prevent stalling of trains in midsections which will otherwise be a safety hazard to the travelling public.

2.3. The energy consumption for Railway traction is billed on a “Two Part” tariff system, in which, “Demand Charges” forms one part and the “Energy Charges” forming the second part. Every point of supply from TNEB is assigned a “Contracted Maximum Demand”, which defines the maximum quantum of load that could be

connected at any given point of time. If the “Recorded Maximum Demand” exceeds the Contracted Maximum Demand due to over-drawl for ‘any reason’, surcharge is levied at 2 times the normal charges for the excess over contracted value.

2.4. Whenever there is interruption to power supply at one traction sub-station, either due to maintenance works of TNEB or failure of equipment of TNEB, power supply from the adjacent traction sub-station is extended, by closing the Bridging interrupter at the neutral section, so as to maintain the essential train services to avoid causing any inconvenience or safety hazard to the travelling public. During the time, the revenue earning goods trains are stopped, to ensure that the passengers are not put to any trouble, whatsoever. During such supply extensions, the total number of trains in the section actually decreases due to stopping of goods trains and therefore the load on the grid decreases. However, the “Demand” at the Railway Traction sub-station, from where supply is extended to the adjacent section increases, due to transfer of load from the failed sub-station zone resulting in the Recorded Maximum Demand exceeding the “Contracted Maximum Demand”. No additional generation, transmission and distribution assets are brought in to operation to meet the increase in demand due to the temporary transfer of load. Whereas, there is direct revenue loss to Railways due to stoppage of freight trains during such failures. Even though the recorded demand exceeds the contracted demand at the sub-station to which load is transferred, it does not exceed the sum total of the contracted demands of the failed sub-station and the sub-station to which the load is transferred. This is the basis on which, the excess Maximum Demand is ignored for billing. The act of penalizing for excess over “Contracted Maximum

Demand” is irrational and at the same time gives undue monetary benefit and unjust enrichment to TANGEDCO.

2.5. Earlier, whenever there is supply failure due to reasons attributable to TNEB, the demand registered at the traction sub-station from where supply was extended used to be ignored by TNEB for billing purposes. However, some Superintending Engineers of Distribution Circles raised objections as there was no such written commitment from TNEB. This was brought to the notice of the TNEB Headquarters and meetings were conducted with the Members of Tamil Nadu Electricity Board. The Board accepted that in the event of power supply failure from TNEB at one point of supply, Railways have no other option except extending power supply from the adjacent point of supply to maintain train services and hence the increase in “Demand” at the supply point from where power supply is extended is beyond the control of Railway.

2.6. However, the Board has agreed only for not to levy excess MD surcharges, when the “Recorded Demand” exceeds the “Contracted Demand” during feed extensions arising out of power supply failures due to TNEB and accordingly issued written instructions in letter No.002961/402/EMC/EE(T)/Tariff-II(2)/90-5, dated 06-01-1993. In response to the requests made by the Railway administration not to charge the excess Maximum Demand, the TNEB in Board Proceedings B.P.No.1 dated 02-01-1993 issued orders not to collect any penal charges for such excess M.D. recorded in Traction Points. Pursuant thereof, the Chairman, TNEB in his Memorandum No.002961/402/SE/EMC/EE(T)/AEE.2/D/95, dated 22-08-1995 communicated this decision.

2.7. Since the request of Railways was to ignore the MD recorded during feed extensions due to power supply failures attributable to TNEB this issue was again discussed between Southern Railways and TNEB in the meeting held on 31-07-1997 and subsequent dates. Finally, the Full Board of TNEB in B.P. (FB) 17, dated 21-01-1998 agreed for the request of the Railways. This decision of the Full Board was communicated to the Railways by the Member (Distribution) TNEB vide his Letter No.002961/SE/IEMC/EE(T)/AEE.2/CR.252/98, dated 05-02-1998. This was issued only after the extensive discussions in the meetings between the officials of Southern Railway and Tamil Nadu Electricity Board held on 31-07-1997, pursuant to the Railway's letters dated 26-07-1996 and 09-07-1996, seeking clarification regarding billing for demand charges towards excess demand arising due to transfer of loads on account of reasons attributable to the Tamil Nadu Electricity Board and hence the same is valid and binding on the Tamil Nadu Generation and Distribution Corporation, which is subsidiary of Tamil Nadu Electricity Board. This letter has neither been set aside by any higher authority of Tamil Nadu Electricity Board or by any Court of law and therefore the same is valid and binding on the Tamil Nadu Generation and Distribution Corporation. The said Tamil Nadu Electricity Board's order communicated through their Member (Distribution)'s Letter No.002961/SE/IEMC/EE(T)/AEE.2/CR.252/98, dated 05-02-1998 is not inconsistent in any manner whatsoever with any of the provisions of the Electricity Act, 2003 and that the same is still valid and binding on the Tamil Nadu Generation and Distribution Corporation and the said letter dated 05-02-1998 is saved under section 185(2) of the Electricity Act, 2003 and that the demand in the High Tension service has exceeded only due to the extension of supply to the adjacent zone, in which there was supply failure, due to the fault of Tamil Nadu Generation and Distribution

Corporation and hence, for such excess demand, the Railway cannot be penalized. This instruction was hitherto followed by all Distribution Circles of TANGEDCO right from 1998 onwards.

2.8. Considering the fact that Railways is a service organization of Government of India and uninterrupted power supply is essential for the safe running of the trains following special privileges were extended to Railway Traction;

- a. Railway Traction has been exempted from the Time of Day (TOD) metering and billing as train services can neither be curtailed nor be staggered to meet the TOD metering requirements. Consequently Railway Traction is excluded from peak hour surcharge and off-peak rebate.
- b. Railway Traction has been exempted from power cuts since it will endanger the safety of travelling public and also result in commotion of public and law and order situations.

2.9. The above privileges for Railway Traction are extended by all supply authorities in the country. Some States have made exclusive mention of the same in the tariff order as obtaining in the Tariff Orders of the State of Gujarat and Chhattisgarh. A request was made by the Petitioner to other Zonal Railways to ascertain the billing method in case of excess CMD due to supply failure from the provider, and from most of other Zonal Railways they have responded that excess of CMD during feed extensions is ignored and only the normal rate is levied and hence the same yardstick may be applied to the Petitioner as well.

2.10. Recently in May 2012, the 1st Respondent, TANGEDCO had ignored the above order of TNEB and unilaterally levied maximum demand charges for the full month based on an internal audit advice. The controlling of recorded maximum demand within the contracted demand is beyond the control of Railways when the power supply fails on account of TANGEDCO but the Railway was forced to pay increased MD charges and surcharge towards excess demand by the Respondents. Railway had therefore requested TANGEDCO, to ignore the excess demand for billing due to failure attributable on account of TANGEDCO as was agreed by them in their Board Proceedings but no reply was received.

2.11. Even during the determination of tariff for Generation and Distribution Order for the year 2012, this objection / suggestion was raised by this Railway before the Commission. In the Tariff Order dated 31-03-2012 the objections were not considered by the Commission. Again in the Tariff Order for the year 2013, this objection was raised by Railways for which TANGEDCO has asked Railways to approach TNERC for suitable amendment to the Supply Code. However the Commission has not made any comments on the issue.

2.12. It is pertinent to state that this benefit was extended to Railways right from 1998 onwards by virtue of an order from the Full Board of then TNEB, much before the enactment of the Supply Code, which came into existence only in 2004. Without properly considering the Railway's request, TANGEDCO decided to dispense with the agreed method of billing already accepted in cases of excess maximum demand recorded over and above the contracted demand i.e. the "sanctioned demand" in

respect of EHT (Extra High Tension) services by the Railway for their Traction sub-stations as follows:-

“The billing for demand charges towards excess demand arising due to transfer of loads on account of reasons attributable to the Tamil Nadu Electricity Board may be restricted to the day(s) of occurrence only on proportionate basis”.

The above was informed to Railways by the Tamil Nadu Electricity Board's order communicated through their Member (Distribution)'s Letter No.002961/SE/IEMC/EE(T)/AEE.2/CR.252/98, dated 05-02-1998. The privilege for billing the above said case is availed by the Railways with prospective effect.

2.13. The contracted demand of Railway traction Service Connection No.1309 at Ennore Railway traction sub-station is 14,000 KVA with effect from 14-10-2009. In the bill for the billing month of May 2012 dated 31-05-2012, the Superintending Engineer / Chennai Electricity Distribution Circle / North has included Rs.72,42,000/- in High Tension Bill with an endorsement that “Audit short fall on demand charges for exceeding the sanctioned demand due to extension of supply” without giving proper notice to consumer prior to inclusion of huge amount. The above bill was received on 04-06-2012. As the due date of payment was 06-06-2012, Railway paid the bill under protest on 05-06-2012 through NEFT (National Electronic Fund Transfer) to avoid belated payment surcharge.

2.14. On scrutiny of the Board office Audit Branch (BOAB) Audit Slip No.1 dated 23-05-2012, in respect of High Tension bills for the period from April 2011 to January 2012 advised short levy of demand the charges of Rs.72,42,000/- to be collected from consumer duly ignoring the “Privilege for billing of Railway Traction Service for

demand charges” issued by Tamil Nadu Electricity Board’s order communicated through their Member (Distribution)’s Letter No.002961/SE/IEMC/EE(T)/AEE.2/CR.252/98, dated 05-02-1998. By letters dated 06-06-2012 and 19-06-2012, the Railway requested the Superintending Engineer / Chennai Electricity Distribution Circle / North to refund the excess amount levied. However, no reply was received.

2.15. The Railway made representations by letters dated 28-06-2012, 27-09-2012 and 30-11-2012 to the Chief Engineer/Commercial/Tamil Nadu Generation and Distribution Corporation, Chennai with copies to the Superintending Engineer / CEDC (Chennai Electricity Distribution Circle/North). Thereafter, the Railway made representations to the Chief Financial Controller / Revenue, Tamil Nadu Generation and Distribution Corporation, Chennai vide letter dated 31-12-2012. Since no reply was received for the representations, the Railway was forced to make complaint before the Consumer Grievance Redressal Forum / Chennai Electricity Distribution Circle /North vide Petition No.1 of 2013 dated 21-02-2013. Section 42(5) of the Electricity Act, 2003 provides for preferring a complaint before the Forum if a consumer is aggrieved by any action of the Licensee. Enquiry was conducted by the said Forum and the following order was passed on 07-06-2013.

- (i) The levying of excess demand charges for entire month on the Southern Railway has been referred to the competent authority.
- (ii) Refund / Adjustment of audit amount paid by the Southern Railway will be considered only on getting reply from the competent authority.

The said order did not even mention as to who is that competent authority. The said order was communicated by the Chairman of the said Forum by letter dated 11-06-2013, served on the Railway on 12-06-2013. Thus, the grievances of the Railway were not at all considered at any level including the Consumer Grievance Redressal Forum of Tamil Nadu Generation and Distribution Corporation, in their proper perspective.

2.16. The Railways therefore preferred an Appeal vide Appeal Petition No.25 of 2013 before the Tamil Nadu Electricity Ombudsman. The Tamil Nadu Generation and Distribution Corporation filed a Counter Affidavit, raising untenable contentions. Without appreciating the various factual contentions and the legal submissions made by the Petitioner herein, the Electricity Ombudsman passed an order dated 25-10-2013, dismissing the Appeal Petition and disallowing the Petitioner's prayer of refund of Rs.72,42,000/- paid towards excess demand charges along with interest.

2.17. Based on the order passed by the Electricity Ombudsman dated 25-10-2013, the Chief Financial Controller sent letter No.CFC/FC/DFC/ AAO.HT/ AS.3/ D.No.137/ 13, dated 01-12-2013 to all Superintending Engineers of Distribution circles of the TANGEDCO calling upon them to follow the orders of the Electricity Ombudsman dated 25-10-2013 and levy demand charges accordingly. Pursuant to the same all Superintending Engineers of Distribution Circles have started collecting demand charges and excess MD charges for their own failures to provide power supply to Railways and the same is illegal, unjust and would amount to unjust enrichment, offending Article 14 of the Constitution of India.

2.18. Aggrieved by the said letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013 passed by the 3rd Respondent, the petitioner was constrained to file W.P.No.5076/14 challenging the same before the Madras High Court and after hearing both sides the Madras High Court was pleased to direct the Petitioner to approach the Commission for suitable modifications in the Tariff Orders and amendment of 5(2)(i) of the Supply Code.

2.19. In the Tariff Order for the year 2012 and 2013, the Commission have omitted to consider the objections / suggestions made by the Petitioner / Railways with regard to excess MD surcharge levied for feed extensions due to reasons attributable to TANGEDCO in spite of the fact that this benefit was extended to the Petitioner from then TNEB from the year 1993 onwards. The Petitioner had been pointing out the instances of violation of assurance given to the Petitioner in the matter of levy of penal charges in cases of excess demand. The 1st Respondent and his subordinates while reassuring that penal charges will not be levied on such circumstances, agreed that the amounts so collected would be adjusted in future bills. This is evident from the letter of the Chairman (TNEB) Memorandum dated August 1995. The said letter in turn referred to the earlier orders of the Board in B.P.No.1 dated 02-01-1993 and not considering this benefit to the Petitioner in the Tariff Orders is unjust and prejudicial to the Petitioner.

2.20. Railways are to pay excess MD surcharge under section 5(2) of the Supply Code even on account of supply failure due to reasons attributable to TANGEDCO which is illegal, unjust, unduly prejudicial to the Petitioner and contrary to the orders passed by the Full Board of the Respondents from 1993 onwards considering the

special category of Railways from other consumers and being a service organization like the Respondents and not a business or profit organization. If suitable amendments are not made to the Supply Code with regard to Railways by adding a proviso exempting Railways from paying double rate on the exceeded demand, huge amounts of public money will have to forcibly be paid towards excess MD surcharge for no fault of Railways especially when the trains carrying thousands of people cannot be stopped on any power failure and it will affect the service provided to the public at large and especially the ticket rates on trains is much lower compared to other modes of road transport and the ultimate beneficiary is only the public and especially when this benefit to other Railways is extended in other States keeping in mind the service rendered by the Petitioner and the object behind the service provided is not for profit.

2.21. The benefit of orders passed by the Respondent is saved under section 185 (2) of the Electricity Act, 2003 since they are not contrary to any of the provisions of the Act. Hence, these benefits would continue to ensure, notwithstanding of repeal of earlier Acts. Therefore, the direction given by the 3rd Respondent pursuant to the order of Electricity Ombudsman in the order dated 25-10-2013 passed in A.P.No.25/2013 is illegal and contrary to section 185(2) of the Electricity Act, 2013. Hence, the same is liable to be set-aside.

2.22. The contention of the TANGEDCO that as per regulation 5 (2) (i) of the Tamil Nadu Electricity Supply Code, the maximum demand charges for any month shall be based on KVA demand recorded in that month or the percentage of sanctioned demand as may be declared by the Tamil Nadu Electricity Regulatory Commission

from to time whichever is higher and hence, the shortfall in maximum demand charges alone was claimed by the 1st Respondent and is as per the regulation and no penal levy is included in the short fall amount of Rs.72,42,000/- is false, since the same is in total violation of the Tamil Nadu Electricity Board's Order communicated through their Member (Distribution)'s Letter No.002961/SE/IEMC/EE(T)/ AEE.2/ CR.252/98, dated 05-02-1998. The Respondents failed to appreciate the justification on the part of the Petitioner and rejected their claim on erroneous reasons.

2.23. Controlling the recorded maximum demand within the sanctioned demand is beyond the control of the Railway, when the power supply failure is on account of reasons attributable to Tamil Nadu Generation and Distribution Corporation and in such cases, the Railway cannot be penalized and levy of such surcharge is clearly prohibited by their own Board's clarificatory order dated 05-02-1998, which is very much valid and binding on Tamil Nadu Generation and Distribution Corporation. The Respondents failed to consider that in a similar case at Cuddalore, the Consumer Grievance Redressal Forum at Cuddalore, by its order dated 28-07-2012, decided the case in favour of the Railway.

2.24. The Respondents have collected a similar claim of Rs.35,16,500/- from the Petitioner at HTSC No.1309 along with energy bill of August 2013. The Respondent by a Show Cause Notice dated 12-12-2013, made yet another claim in HTSC No.1183 Arakkonam/TSS towards shortfall of demand charges for the month of January 2010 and surcharges totaling in all Rs.28,70,280/- giving 15 days' time to make the payment, failing which, the said amount would be included in the future CC (Current Consumption) Bill, received by the Railway on 18-12-2013. The Petitioner

issued a reply dated 24-12-2013 requesting not to include the said claim in the bill since Writ Petition is being filed challenging the order of the Ombudsman and the consequential orders. Despite receiving the same on 26-12-2013, a bill dated 30-12-2013 including the aforesaid sum of Rs.28,70,280/- fixing the due date as 05-01-2014, which fell on a Sunday, has been issued. In order to avoid belated payment surcharge, the bill was paid under protest within the due date.

2.25. The Respondents have been making such demands on erroneous and illegal grounds and are also imposing excess MD surcharge on the Petitioner, for no fault of the Railway. On 18-01-2014 TANGEDCO availed shutdown for 7 hrs 26 min on both the 110 KV feeders to Chintadripet Traction Sub-Station from 10:16 hrs to 17:42 hrs for executing some maintenance work at TANGEDCO's Chintadripet 110 kV/SS. Power supply had to be extended from Ennore Traction sub-station for running train services in the Chennai Beach – Nungambakkam and Chennai Beach – Velachery sub-urban sections. Recorded MD at Ennore has increased from 13432 kVA to 18852 kVA. Subsequently, on 22-01-2014, 110 KV power supply to Tambaram Traction sub-station has failed for 1hr 7 min during the evening peak hour from 17:27 hrs. to 18:34 hrs due to an insulator failure in TANGEDCO's 230kV/110kV Kadeperi/SS. Power supply had to be extended from the adjacent Traction sub-stations on both sides at Acharapakkam and Ennore to maintain train service in the sensitive sub-urban section Chennai Beach – Tambaram –Chengalpattu. Due to this the recorded MD at Ennore TSS has increased to 26022 kVA. The contracted MD at Chintadripet/TSS is 1100 kVA at Tambaram/TSS, it is 17500 kVA and that of Ennore/TSS is 14000 kVA. In both the occasions mentioned above the Recorded Demand at Ennore/TSS was less than the sum of the Contracted Demands, which

TANGEDCO is obligated to meet, at the supply failed and supply extended Traction sub-stations. Further, TANGEDCO had neither brought in any additional infrastructure into service nor incurred any additional expenditure to meet the additional demand at Ennore/TSS. With the revised procedure for billing the recorded MD as advised by CFC/TANGEDCO, the 3rd Respondent has levied Rs.90,53,583/- as excess MD surcharge for exceeding the contracted maximum demand for no fault on the part of Railways.

2.26. The Respondents have made similar excess claims for feed extensions due to power supply failure from TANGEDCO and collected a total sum of Rs.3,19,17,113.00 as detailed below:-

- a. SE/Chennai EDC/North at HTSC No.1309 Ennore / TSS
 - i. Rs.15,63,567 during December 2012
 - ii. Rs.4,83,700 during January 2013.
 - iii. Rs.26,03,383 during August 2013
 - iv. Rs.5,75,667 during December 2013
 - v. Rs.90,53,583 during January 2014
- b. SE/Erode EDC at HTSC No.084 Ingur/TSS
 - i. Rs.7,90,333 during December 2013
- c. SE/Cuddalore EDC at HTSC No.133 Vriddachalam/TSS
 - i. Rs.18,95,500 during July 2013
 - ii. Rs.1,57,950 during November 2013
- d. Trichy EDC/North at HTSC No.71 Ariyalur/TSS
 - i. Rs.11,64,650 during January 2014

2.27. The Respondents have so far illegally collected a sum of Rs.3,19,17,113.00 towards demand charges and excess MD surcharge for feed extensions from the adjacent traction sub-stations due to 110 kV power supply failure from TANGEDCO for no fault on the part of Railways making a windfall gain and making a unjust enrichment. It is learnt that on the request made by the respective Zonal Railways,

that the Electricity Departments of all other States do not levy any surcharge for the recorded MD during feed extensions due to supply failures attributed to the Electricity Board and ignore that "Demand" for billing purpose.

3. Contentions of the Respondents in their Counter Affidavit dated 15-09-2014:-

3.1. The Southern Railways are availing a number of EHT services from TANGEDCO Railway Traction at several Traction Sub-station points throughout the State. In the event of any supply failure (or) shut-down works, with a view to prevent dislocation of traffic, the Railways transfer the loads to the adjacent Traction Sub-station unit, thereby restoring normalcy. This results in the exceeding of the contracted demand of adjacent Traction Sub-station. In view of above circumstances, erstwhile TNEB, after careful consideration had approved the following proposals vide Permanent B.P.(F.B.) No.17 (Technical Branch), dated 22-01-1998 which reads as follows:-

- “(i) The billing for demand charges towards excess demand arising due to transfer of loads on account of reasons attributable to the Board may be restricted to the day(s) of occurrence only on proportionate basis.
- (ii) If the reasons for such excess demand are attributable to the Railways themselves, the penal levy will be levied for such excess demand, besides billing under normal rates of tariff as provided for in the terms and conditions of supply of electricity.
- (iii) The possibility of providing suitable software in TOD meters, already installed, so as to retrieve the particulars of the duration of excess over the demand of the Station and verifying this period with the feeding sub-stations and levying charges accordingly, is to be examined and implemented”.

3.2. In continuation of the said B.P, the detailed working instructions had been issued vide Memo No.SE/IEMC/EET/AEE2/CA.252/98, dated 10-02-1998 which reads as follows:

“For implementation of the above order (B.P.No.17 dated 22-01-1998) of the Board, the following working instructions are issued:

- (i) The Superintending Engineers/Distribution Circles, in whose jurisdiction, the E.H.T. service of Railway Traction is located, shall furnish the details of Name of Traction supply point, H.T. SC.No., sanctioned demand, the date of monthly meter reading taken etc., in respect of such Railway Traction E.H.T. Service to the Executive Engineers of the concerned feeding sub-stations.*
- (ii) The Executive Engineers of the feeding sub-station concerned shall furnish the details of interruptions of supply in the E.H.T. lines feeding the Railway Traction Services for each billing month such as time, date, duration and reasons of interruption of supply etc., to the Superintending Engineers of Distribution Circles concerned, before the end of the each month (i.e.) if the regular meter reading date for billing purpose is 28th of each month, then the details of interruptions, if any from the 28th of the previous month upto 27th of the current month shall be furnished before 30th of the current month. Even, if there is no interruption of supply during any particular billing month, a “NIL” report has to be sent.*
- (iii) The Superintending Engineers / Distribution Circles concerned, before raising the current consumption bills for Railway Traction services, shall verify whether any excess demand is recorded over and above the sanctioned demand and whether such excess demand was due to reasons attributable to the Board as ascertained from the monthly reports received from the Executive Engineers of the feeding sub-stations concerned.*

In case, the reasons for such excess demand are found to be attributable to the Board, the billing for demand charges towards the excess demand shall be restricted only to the day(s) of occurrence on proportionate basis (i.e.) while billing the sanctioned demand under normal rates for the entire month, the billing of the excess demand shall be on proportionate basis of the normal rates, only for the day(s) of occurrence of interruption of supply on the part of Board. For the purposes of calculating demand charges on proportionate basis, even if interruption is for a few hours in a day, it shall be reckoned as one full day only.

In case, the reasons for such excess demand are attributable to the Railways themselves, then in addition to billing the entire demand under normal rates, the excess demand shall be subjected to extra levy of double the normal rates.

- (iv) *Since TOD meters have been provided for all Traction E.H.T. services and since there is inbuilt software programme to record data relating to demand reached for every half an hour interval which can be retrieved with the help of MRI (Meter Reading Instrument) for a maximum back period of 45 days, the MRT division with whom such MRI is available may be requested to retrieve the data, relating to maximum demand recorded either on the regular date of meter reading for billing purpose (or) on any other subsequent convenient date prior to the preparation of the bill, feed the data into a computer and get the load curve plotted using the printer and forward the same to the Circle Office. As instructed vide para (iii) B.P.No.17 dated 22-01-1998, the particulars of the duration of excess demand over and above the sanctioned demand recorded in the Time of Day Meters (TOD Meters), installed at the Traction E.H.T. service, as may be seen from the load curve sent by the MRT shall be verified with the particulars of interruption furnished by the Executive Engineer of the feeding sub-station concerned and billing for the excess demand shall be done in accordance with the instructions issued vide Permanent B.P.(F.B.) No.17 (Technical Branch) dated 22-01-1998”.*

3.3. The excess demand charges were not levied in respect of the Railway Traction services at par with other HT service connections. The Board Office Audit Branch (Internal Audit of TANGEDCO) has raised an objection towards billing on recorded demand in respect of railway traction HT.SC.No.1309 for the period from 10/2010 to 3/2011 for the amount of Rs.72,42,000/- due to reasons that there was no such concession in the TNE Supply Code. The same has been communicated to M/s. Southern Railways and the said amount had been paid. In continuation to the above, the Superintending Engineer, Chennai Electricity Distribution Circle North has requested clarification whether the excess demand charges shall be levied on the recorded demand in respect of Southern Railway Traction though the reason for extension of supply was attributable to the Board or may be levied as per the instruction of Member / Distribution during 10-02-1998. In continuation to the above, upon approval, the Superintending Engineer / Chennai had been instructed vide letter dated 26-06-2013 which held as follows:-

“In continuation to the above, upon approval, the Superintending Engineer / Chennai had been instructed vide letter dated 26-06-2013 which held as follows:

“2. In this connection, it is stated that billing of excess demand arising due to transfer of loads from adjacent traction sub-station on account of supply failure on the part of TANGEDCO if levied in accordance with the permanent B.P.(F.B.) No.17 (Technical Branch) dated 22-01-1998 and Memo No.SE/IEMC/EET/AEE2/CA.252/98 dated 10-02-1998 were technically in order. However, there is no provision in the TNE Supply Code for levying demand charges proportionately in respect of Railway Traction Services.

3. As the Tamil Nadu Electricity Supply Code notified by the TNERC is in the nature of Subordinate legislation and TANGEDCO is entitled to bill the excess demand charges in respect of Railway Traction HT services as provided for in the Tamil Nadu Electricity Supply Code, the audit objection in this regard is valid and legal. If at all, the Southern Railway is aggrieved of the manner of billing excess demand by TANGEDCO, it is open to the Railways to approach TNERC and seek appropriate amendment to TNE Supply Code”.

3.4. Similarly, the Superintending Engineer / Chennai North EDC has issued order on 07-06-2013 in Appeal Petition filed before CGRF. In that order, it has been stated that the refund will be considered only on getting a reply from the competent authority. Aggrieved by the above order, Southern Railway filed Appeal Petition No.25 of 2013 before the Electricity Ombudsman.

3.5. The Electricity Ombudsman in order dated 25-10-2013 made in Appeal No.25 of 2013 upheld the Chief Financial Controller / Revenue's memo dated 26-06-2013 as follows:-

“9. Findings of Ombudsman:

9.1..... the issue for consideration is “whether the M(D)’s instruction dt. 5.2.98, which is directing the officers of the licensee to levy of excess demand charges on proportionate day of occurrence basis if the excess demand is arising due to transfer of loads on account of reasons attributable to the Board could be adopted even after notification of the supply code?

xxxxxxx

“9.9. On a plain reading of the above letter, it is noted that demand charges towards excess demand arising due to transfer of loads on account of the reasons attributable to the Board may be restricted to the days of occurrence only on proportionate basis. If such excess demand is attributable to Railways themselves, the penal levy may be levied for such excess demand, besides billing under normal rates of tariff as provided in the terms and conditions.

9.10. As the respondent cited regulation 5 (2) (i) of the Supply Code, the said regulation is reproduced below:-

“5. Miscellaneous Charges

xxx xxx xxx

(2) Excess demand charge

Whenever the consumer exceeds the sanctioned demand, excess demand charge shall be:

- (i) In the case of HT Supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may*

be declared by the Commission from time to time whoever is higher. The exceeded demand shall alone be charged at double the normal rate”.

“x x x x

Billable Demand: In case of two part tariffs, maximum demand charges for any month will be levied on the kVA demand actually recorded in that month or 90% of the sanctioned demand whichever is higher”.

9.14. Hence, conjoint reading of regulation 5 (2) (i) of the Supply Code and para 9.11.1.1 (4) of the Tariff Order No.3 of 2010 dated 31-07-2010, the maximum demand charges for a month will be levied on the KVA demand actually recorded in that month or 90% of the sanctioned demand whichever is higher.

9.15. In the case on hand, the actual demand recorded during the months have been taken for arriving the maximum demand charges. Hence, they are as per tariff order and regulation 5(2) (i) of the Supply Code only. In the above regulation there is no provision for calculation of demand charges on proportionate day basis.

x x x x x

9.19. On a careful reading of sub-section (2) (a) of the section 185 of the Electricity Act, it is noted that the Indian Electricity Act, 1910, the Electricity Supply Act, 1948 and the Electricity Regulatory Commission Act, 1998 are repealed. However, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment. Confirmation or declaration made or any licensee permission authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have done or taken under the corresponding provisions of the Act.

9.20. In this connection, it is to be noted that there is no provision in regulation 5(2)(i) of the Supply Code to permit the licensee to grant concession in respect of levy of excess demand charges. Unless there is a

provision for the licensee to grant such concession to any consumer in Supply Code, the executive order issued by the Member (Distribution) on 5.2.98, above has to be treated as inconsistent with the provisions of the Electricity Act and treated as not valid after notification of Supply Code.

9.21. In view of the above, I am of the view that the Member (Distribution)'s instruction dt. 5.2.98 is not valid now and the Appellant's prayer of refund of Rs.72,42,000/- paid towards excess demand charges along with interest is not acceptable".

3.6. Pursuant to the above, all the Superintending Engineer of Distribution Circles of the TANGEDCO were informed that the charges for exceeding the sanctioned demand / contracted demand (excess demand charges) arising due to transfer of loads from adjacent traction sub-station on whatever reason shall be levied in accordance with the provision 5 (2) (i) of Tamil Nadu Electricity Supply Code, in addition to billing under normal tariff rates as provided in the corresponding Tariff Order as upheld by the Electricity Ombudsman in order dated 25-10-2013 in A.P.No.25 of 2013 vide Chief Financial Controller / Revenue's letter dated 01-12-2013.

3.7. The Chief Electrical Distribution Engineer, Southern Railway has filed W.P.No.5075 of 2014 and W.P.No.5076 of 2014 so as to set aside the Electricity Ombudsman's order dated 25-10-2013 and the consequential order issued by the Chief Financial Controller/Revenue, dated 01-12-2013 respectively:-

In the order dated 21-02-2014 made in W.P.No. 5076 of 2014 challenging the impugned letter of the CFC/North, High Court ordered as follows:-

"16. According to the learned Senior Counsel for Railways, the excess demand charges for the month of February 2014, would be Rs.15,61,000/-.

Whereas on instructions from the officials of TANGEDCO, present in the Court, Mr.P.H.Arvind Pandiyan, learned Additional Advocate General, submitted that the excess demand charges would be only Rs.9,41,000/- and not Rs.15,61,000/- as claimed. The difference in the alleged excess demand charges, is Rs.6,20,000/-. Railways has a duty to provide continuous service. In the case on hand, according to Railways, there was a failure of power supply for 25 minutes which has necessitated fee extension. As stated supra, Tamil Nadu Electricity Regulatory Commission, Chennai has not given any finding on the objections / suggestions of the Railways on the aspects stated supra.

17. Regulation 5(2) of the Tamil Nadu Electricity Supply Code, 2004, state as follows:-

“Excess Demand Charge: Whenever the consumer exceeds the sanctioned demand, excess demand charge shall be:

- (i) in case of the HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time, whichever is higher. The exceeded demand shall alone be charged at double the normal rate:

x x x x x x

“18. Though, Regulation 5(2) of the Tamil Nadu Electricity Supply Code, 2004, states that whenever the consumer exceeds the sanctioned demand, excess demand charges can be made as stated supra, as pointed out, as much as Tamil Nadu Electricity Regulatory Commission, Chennai in its tariff order Nos.1 of 2012 dated 30-03-2012 and 1 of 2013 dated 20-06-2013, respectively, has not given any specific findings, liberty is given to challenge the order of the Chief Financial Controller, Chennai in letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013, before the Tamil Nadu Electricity Regulatory Commission, Chennai. Considering the material on record, the issues touching upon the objections / suggestions, extract supra, in the opinion of this Court, certainly require an adjudication by the Commission and an order need to be passed.

19. At this juncture, learned Senior Counsel for the Petitioner also submitted that Southern Railways, would take out proper application for clarifications, in the

tariff order Nos.1 of 2012 dated 30-03-2012 and 1 of 2013 dated 20-06-2013. It is left to the discretion of the Southern Railways to do so.

20. At this juncture, Mr.G.Vasudevan, learned Standing Counsel appearing for TANGEDCO, pointed out that when tariff order Nos.1 of 2012 dated 30-03-2012 and 1 of 2013 dated 20-06-2013 respectively, were issued by the Tamil Nadu Electricity Regulatory Commission, Chennai, there was no objection to the same. But then, Southern Railways chose to pay the excess demand charges periodically.

21. As pointed out earlier, no finding or view has been expressed by the Tamil Nadu Electricity Regulatory Commission, Chennai on the specific objections / suggestions, extracted supra. The request, has not been negatived, but remained unanswered. In such circumstances, this court is of the view that Tamil Nadu Electricity Regulatory Commission, has to specifically address and answer the same.

22. In the light of the discussions stated supra, Southern Railways is at liberty to challenge the impugned proceedings in letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013 and pray for other whatever reliefs before the Commission, permissible under law.

23. As regards the hardships now faced by the Railways in making payment of Rs.15,61,000/- being the excess demand charges, and disputed by the learned Additional Advocate General, considering the service rendered by Southern Railways, and the discussions, while granting liberty to Southern Railway to challenge the impugned proceedings, this court directs TANGEDCO, to permit the Southern Railways payment Rs.33,37,350/- for the month of February 2014 and subsequent months. It is not blanket order. It is made clear that the alleged excess demand charges of Rs.15,61,000/- need not be paid, until the Southern Railways, takes up appropriate proceeding before the Commission and appropriate orders are passed in the interim applications. Liberty is also given to Southern Railways, to seek for stay of the impugned proceedings. But for the present, it is made clear, the payment is restricted to the demand, excluding Rs.15,61,000/-.

xxxxx

“25. Considering the issues involved, it is just and necessary that Tamil Nadu Electricity Regulatory Commission, Chennai, has to be impleaded as a party to this writ petition, for effective enforcement of the orders. Therefore, in exercise of the powers under Article 226 of the Constitution of India, this court suo motu impleads Tamil Nadu Electricity Regulatory Commission, Chennai as a party

Respondent. Registry is directed to carryout necessary amendments in the cause title in the writ petition, as well as in the Miscellaneous Petitions.

26. No sooner, Southern Railways files any petition or application challenging the proceedings of the Chief Financial Controller in letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013, with applications for interim orders, or any other application, seeking modification of the tariff orders, the Commission shall take up the interim applications and pass appropriate orders on merits as expeditiously as possible. Till such time, the TANGEDCO is restrained from enforcing any excess demand. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.”

3.8. In view of the above orders of the High Court, all the Superintending Engineers were informed that the levy of excess demand in the bill may continue to be as per the TNE Supply Code. However, the billing of excess demand arising due to transfer of loads from adjacent Traction Sub-station on account of supply failure on the part of TANGEDCO shall be collected in accordance with the said High Court order dated 21-02-2014 for the month of February 2014 and subsequent months until further instructions are issued in this subject from this office. Based on the order of the High Court of Madras, the Petitioner herein has filed this petition.

3.9. After the implementation of the Tamil Nadu Electricity Supply Code, there is no provision in regulation 5 (2) (i) of the Supply Code to permit the licensee to grant concession in respect of levy of excess demand charges. Unless there is a provision in the Supply Code enabling the licensee to grant such concession to any consumer, the executive order issued by the Member (Distribution) on 05-02-1998 as above has to be treated as inconsistent with the provisions of the Electricity Act and treated as not valid after notification of Supply Code.

3.10. As per the said regulation, the maximum demand charges for any month shall be based on the KVA demand recorded during that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. The exceeded demand alone is charged at double the normal rate.

3.11. The Railways has raised the said issue while issuing the 2012 tariff order and 2013 tariff order as noted in para No.2.1.283 and 2.406 respectively which are reproduced below:-

Tariff order No.1 of 2012 dated 30-03-2012

Issue 42: Objection/Suggestions by Southern Railways:

x x x x

2.1.283. Excess MD surcharge should not be levied for feed extensions necessitated due to reasons attributable to TANGEDCO, TANTRANSOCO and reasons beyond the control of Railways.

x x x x

21. Tariff Order No.1 of 2012 dated 20-06-2013

Objection / Suggestions by Southern Railways:

x x x x

2.406. Commission to incorporate the agreed conditions between Railway and TANGEDCO in the terms and conditions for Railway Traction to avoid confusion in some circles in the matter of billing of recorded demand during feed extensions.

x x x x

In this regard, TANGEDCO replied in the Tariff Order in 2013 as follows:-

2.413. The request of the Southern Railways not to levy any penalty for occasional exceeding above to the Contracted Maximum Demand is not related to the tariff order and can be considered only by way of an amendment to the Tamil Nadu Electricity Supply Code. Hence, the Southern Railways are requested to approach the TNERC for making necessary amendment to the TNERC Supply Code."

But, no specific order has been issued by the Commission on the above suggestion of the Petitioner in the said tariff orders. This means that the Commission has not considered the request of the Petitioner. Therefore, the instructions had already been issued vide letter dated 05-02-1998 is modified and

rescinded and becomes invalid by virtue of the Electricity Act, 2003, the Commission's Tamil Nadu Electricity Supply Code and the Commission's tariff orders. Therefore, the said letter dated 05-02-1998 is not saved under section 185(2) of the Electricity Act, 2003.

3.12. The imperative and implicit in terms of the Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior. In this case, the Commission had notified the Tamil Nadu Electricity Supply Code and the respective Tariff Order after obtaining views of the public, under section 50 and section 62, respectively duly following the procedure under section 64 of the Electricity Act, 2003. Based on the Commission's order, the Respondent has levied the demand charges and the excess demand charges. Therefore, the action of the Respondent is not arbitrary or by any ulterior motive. Hence, the levy of demand charges and excess MD charges for Railway Traction services is legal and would not amount to unjust enrichment, not offending Article 14 of the Constitution of India.

3.13. The Railway Traction Service connections are of EHT wherein the traction services can transfer the load from one service connection to another service connection whenever required for smooth running of trains. This facility is provided only to the traction service connections. Whenever such load transfer occurs, it leads to sudden increase in demand in the adjacent traction service connection. This will affect the grid as well as the electrical equipments of the adjacent sub-station. Therefore, in order to compensate the loss arising due to such load transfer, the levy of excess demand charges is legitimate one.

4. Findings of the Commission:-

4.1 The Petitioner Southern Railway draws electrical energy for running the passenger trains and the goods trains, from the overhead lines of TANGEDCO through the Sliding Contact Mechanism called “Pantograph”.

4.2 The power supply is availed from the 110 kV Grid of TANGEDCO and is stepped down to 25 kV at the Railway Traction Sub-Station owned and operated by Railway. 25 kV AC Electrical Traction is in existence in Tamil Nadu from 1965. Every Traction Sub-Station feeds to a Track Section of about 40 KM to 60 Km (20 to 30 Km on either side). There are 23 such Traction Sub-Stations owned and operated by the Southern Railway. Since power supply for Railway Traction is taken across two phases out of three phases of the supply system, power supply is availed cyclically from the three phases at the contiguous Traction Sub-Stations such that the load on the grid is balanced across the three phases. Whenever there is interruption to power supply at one Traction Sub-Station either due to maintenance works of TNEB or failure of equipment of TNEB, power supply from the adjacent Traction Sub-Station is extended by closing the bridging interrupter at the neutral section so as to maintain the essential train services to avoid causing any inconvenience or safety hazard to the travelling public.

4.3 The Petitioner contents that during such supply extensions, the total number of trains in the section actually decreases due to stopping of goods trains and therefore the load on the grid decreases. However, the “Demand” at the Railway Traction Sub-Station, from where supply is extended to the adjacent section increases, due to transfer of load from the failed sub-station zone resulting in the Recorded Maximum Demand exceeding the “Contracted Maximum Demand”.

4.4 No additional generation, transmission and distribution assets are brought into operation to meet the increase in demand due to the temporary transfer of load. When things stood thus the TANGEDCO issued the impugned letter which sought to penalize the Petitioner by charging at double rate for such exceeded demands eventhough such contingency arises due to the fault of TANGEDCO.

4.5 Aggrieved, the Petitioner filed representation before CGRF which did not yield a favourable result. Therefore, the Petitioner approached the Electricity Ombudsman by way of A.P.No.25 of 2013. The Electricity Ombudsman dismissed the Appeal on 25-10-2013 for the reasons stated in his order. Challenging the order of the Electricity Ombudsman, the Southern Railway filed the W.P.No. 5075 of 2014 before the Madras High Court, which is still pending to be disposed by the High Court.

4.6 The Southern Railway has filed another W.P. namely, W.P.No. 5076 of 2014 before the Madras High Court challenging the impugned letter. The said Writ Petition (W.P.No.5076 of 2014) has been disposed of by the High Court on 21-02-2014 with the following observations:-

“16. According to the learned Senior Counsel for Railways, the excess demand charges for the month of February 2014, would be Rs.15,61,000/-. Whereas on instructions from the officials of TANGEDCO, present in the Court, Mr.P.H.Arvind Pandiyan, learned Additional Advocate General, submitted that the excess demand charges would be only Rs.9,41,000/- and not Rs.15,61,000/- as claimed. The difference in the alleged excess demand charges, is Rs.6,20,000/-. Railways has a duty to provide continuous service. In the case on hand, according to Railways, there was a failure of power supply for 25 minutes which has necessitated fee extension. As stated supra, Tamil Nadu Electricity Regulatory Commission, Chennai has not given any finding on the objections / suggestions of the Railways on the aspects stated supra.

X X X X X X

“18. Though, Regulation 5(2) of the Tamil Nadu Electricity Supply Code, 2004, states that whenever the consumer exceeds the sanctioned demand, excess demand charges can be made as stated supra, as pointed out, as much as Tamil Nadu Electricity Regulatory Commission, Chennai in its tariff order Nos.1 of 2012 dated 30-03-2012 and 1 of 2013 dated 20-06-2013, respectively, has not given any

specific findings, liberty is given to challenge the order of the Chief Financial Controller, Chennai in letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013, before the Tamil Nadu Electricity Regulatory Commission, Chennai. Considering the material on record, the issues touching upon the objections / suggestions, extract supra, in the opinion of this Court, certainly require an adjudication by the Commission and an order need to be passed.

19. At this juncture, learned Senior Counsel for the Petitioner also submitted that Southern Railways, would take out proper application for clarifications, in the tariff order Nos.1 of 2012 dated 30-03-2012 and 1 of 2013 dated 20-06-2013. It is left to the discretion of the Southern Railways to do so.

20. At this juncture, Mr.G.Vasudevan, learned Standing Counsel appearing for TANGEDCO, pointed out that when tariff order Nos.1 of 2012 dated 30-03-2012 and 1 of 2013 dated 20-06-2013 respectively, were issued by the Tamil Nadu Electricity Regulatory Commission, Chennai, there was no objection to the same. But then, Southern Railways chose to pay the excess demand charges periodically.

21. As pointed out earlier, no finding or view has been expressed by the Tamil Nadu Electricity Regulatory Commission, Chennai on the specific objections / suggestions, extracted supra. The request, has not been negated, but remained unanswered. In such circumstances, this court is of the view that Tamil Nadu Electricity Regulatory Commission, has to specifically address and answer the same.

22. In the light of the discussions stated supra, Southern Railways is at liberty to challenge the impugned proceedings in letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013 and pray for other whatever reliefs before the Commission, permissible under law.

23. As regards the hardships now faced by the Railways in making payment of Rs.15,61,000/- being the excess demand charges, and disputed by the learned Additional Advocate General, considering the service rendered by Southern Railways, and the discussions, while granting liberty to Southern Railway to challenge the impugned proceedings, this court directs TANGEDCO, to permit the Southern Railways payment Rs.33,37,350/- for the month of February 2014 and subsequent months. It is not blanket order. It is made clear that the alleged excess demand charges of Rs.15,61,000/- need not be paid, until the Southern Railways, takes up appropriate proceeding before the Commission and appropriate orders are passed in the interim applications. Liberty is also given to Southern Railways, to seek for stay of the impugned proceedings. But for the present, it is made clear, the payment is restricted to the demand, excluding Rs.15,61,000/-.

xxxxx

“25. Considering the issues involved, it is just and necessary that Tamil Nadu Electricity Regulatory Commission, Chennai, has to be impleaded as a party to this writ petition, for effective enforcement of the orders. Therefore, in exercise of the powers under Article 226 of the Constitution of India, this court suo motu impleads Tamil Nadu Electricity Regulatory Commission, Chennai as a party Respondent. Registry is directed to carryout necessary amendments in the cause title in the writ petition, as well as in the Miscellaneous Petitions.

26. No sooner, Southern Railways files any petition or application challenging the proceedings of the Chief Financial Controller in letter No.CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013, with applications for interim orders, or any other application, seeking modification of the tariff orders, the Commission shall take up the interim applications and pass appropriate orders on merits as expeditiously as possible. Till such time, the TANGEDCO is restrained

from enforcing any excess demand. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.”

Pursuant to the order of the Madras High Court in paras 25 and 26 of the judgment quoted above, the Petitioner has filed the present petition before the Commission.

4.7 The prayer of the Southern Railway is to restrain the TANGEDCO from imposing any charge pursuant to the impugned letter of TANGEDCO No. CFC/FC/DFC/AAO.HT/AS.3/D.No.137/13, dated 01-12-2013 and not to collect any MD charges that already been imposed, pending disposal of the petition.

The prayer in I.A.No.1 of 2014 in M.P.No.28 of 2014 is to amend the provisions of Regulation 5 (2) of the Supply Code by adding a proviso to exempt railways from paying double rate for any exceeded demand.

Regulation 5 (2) (i) of the Supply Code is extracted below:-

“5 (2) Excess demand charge

Whenever the consumer exceeds the sanctioned demand, excess demand charge shall be: -

(i) In the case of HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double the normal rate.”

4.8 The Tamil Nadu Electricity Supply Code has been framed in exercise of its power conferred on the Commission under sections 50 and 181 of the Electricity Act, 2003. (for short 2003 Act)

The impugned letter of CFC/TANGEDCO dated 01-12-2013 was issued to the effect that excess demand charges have to be collected from the Petitioner for violation of Regulation 5(2) (i) of the Tamil Nadu Electricity Supply Code. Further, the

above letter was the consequence of the audit slip dated 23-05-2012 issued by the Internal Audit wing of the Licensee.

4.9 The Southern Railway is perhaps the only unique type of HT consumer, as the said consumer draws power from multiple points of supply of the TANGEDCO even for any single operation namely, running of trains continuously. The Southern Railway has made a request to the TNEB pertaining to the same issue being dealt with in this case, as early as in 1992. Pursuant to the said request, the TNEB issued Per BP (FB) No.1, Technical Branch, dated 02-01-1993 as extracted below:-

*“Permanent B.P.(FB) No.1 (Technical Branch) Dated 2-1-1993
Margazhi 18, Aangeerasa
Thiruvalluvar Aandu 2023*

Read:

Item No.8 of Minutes of 646th Meeting of the Board held on 18-12-1992.

Proceedings:

M/s.Southern Railways are availing H.T. supply from Tamil Nadu Electricity Board at several Traction Sub-station points. They are exceeding the Contracted Maximum Demand at a particular point of supply of Traction Sub-station due to transfer of loads from the adjacent Traction Sub-station point of supply in case of emergency (i.e. Electricity Board supply failure). The Tamil Nadu Electricity Board is charging such excess Contracted Maximum Demand at double the normal rate as per Clause 18.02 of Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity. M/s. Southern Railways have represented to Tamil Nadu Electricity Board not to levy penal charges on such contingencies.

After careful consideration of the above representation, Tamil Nadu Electricity Board hereby orders not to levy penal charges for any excess demand which has arisen due to transfer of load of a particular Traction Sub-station point of supply to another adjacent Traction Sub-station point of supply in case of emergency arising out of Electricity Board's supply failure etc.

(By Order of the Board)”.

In the letter dated 06-01-1993, the Member (Distribution) TNEB informed the Railways as follows:-

“Further to the letter first cited, it is to be informed that the Board has approved the request of M/s. Southern Railways not to levy penal charges for any excess demand which has arisen due to transfer of load of a particular Traction sub-station point of supply to another adjacent Traction sub-station point of supply in case of emergency arising out of Electricity Board’s supply failure etc. Hence, you are requested to contact the Chief Engineers / Superintending Engineers concerned in the matter whenever such contingencies arise.

(2) The Tamil Nadu Electricity Board has not approved the request of M/s. Southern Railways for not levying penal charges whenever they exceed the sanctioned maximum demand where the Tamil Nadu Electricity Board is not able to accord sanction for additional loads in a period of two months due to various technical reasons attributable to Tamil Nadu Electricity Board.”

It is further seen that the TNEB after considering a further request of the Southern Railway, has issued Permanent B.P.(FB) No.17 dated 21-01-1998 which is extracted below:-

*“Permanent B.P. (F.B.) No.17 (Technical Branch) Dated: 22-1-1998.
Thai 9, Easwara,
Thiruvalluvar Aandu 2029
Read:*

- 1) Minutes of the 785th meeting of the Tamil Nadu Electricity Board held on 5-1-98. (Item No. 40).*
- 2) Permanent B.P. (F.B). No.1 (Technical Branch), dated 2-1-93.*

Proceedings:

The Southern Railways are availing a number of EHT services from Tamil Nadu Electricity Board for Railway Traction at several Tractions Sub-station points. In the event of any supply failure (or) shut down works, in order to prevent dislocation of traffic, the Railways transfer the loads to the adjacent Traction Sub-station until normalcy is restored and this results in exceeding the Contracted demand for adjacent Traction Sub-station.

Based on the representation from the Railways, the Board in its 646th meeting held on 18-12-92 issued orders vide (Permanent) BP. (F.B). No.1, dated 02-01-93, not to levy penal charges for any excess demand arising due to transfer of

loads of a particular Traction Sub-station point of supply, in case of emergency arising out of Electricity Board's supply failure etc.,

The Railways have again represented that in such cases of exceeding the Contracted demand arising due to reasons attributable to the Tamil Nadu Electricity Board, the excess Maximum Demand should not be billed even at normal rates and has to be ignored.

During the discussions with Southern Railways on 31-7-97, it was agreed that the request of the Railways would be examined by the Board to the limited extent of restricting the demand charges for the excess Maximum Demand in such cases proportionately for the day(s) of occurrence.

The Tamil Nadu Electricity Board, after careful consideration, approves the following proposals:-

(i) The billing for demand charges towards excess demand arising due to transfer of loads on account of reasons attributable to the Board may be restricted to the day(s) of occurrence only on proportionate basis.

(ii) If the reasons for such excess demand are attributable to the Railways themselves, the penal levy will be levied for such excess demand, besides billing under normal rates of tariff as provided for in the Terms and Conditions of Supply of Electricity.

(iii) The possibility of providing suitable Software in TOD meters, already installed, so as to retrieve the particulars of the duration of excess over the demand of that Station and verifying this period with the feeding Sub-stations and levying charges accordingly, is to be examined and implemented.

(By Order of the Board)".

4.10 It is significant that the said B.P.No.17 was neither withdrawn nor amended subsequently either expressly or by implication by the TNEB and it was continued to be honoured and implemented till the audit slip came to be issued in the year 2012 i.e. after lapse of a period of more than fourteen years that too purportedly on the basis of Regulation 5 (2) (i) of the Supply Code which was issued in the year 2004 itself.

Section 185 of the Electricity Act, 2003 provides as follows:-

“185. (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

x x x x x “

4.11 The Senior Counsel appearing on behalf of the Petitioner vehemently argued that the aforesaid B.P. and the related communications issued by the erstwhile Member of TNEB are saved by virtue of the provisions of section 185 of the Electricity Act, 2003.

On the contrary, the Respondent argued that the aforesaid B.P. is in the nature of a concession and that there was no such concession in the Tamil Nadu Electricity Supply Code. The Respondent further argued that the point as to billing for Railway Tractions and Loads arose during the issue of Tariff Order No.1 of 2012 dated 30-03-2012 as well as during the issue of Tariff Order No.1 of 2013 dated 20-06-2013 and in both the orders no separate billing method for the Railway Traction Load has been prescribed. The Respondent also contended that the transferring of load from one service connection to another service connection leads to sudden increase in demand in the adjacent Traction Service Connection would affect the grid as well as the electrical equipments of the adjacent sub-station and

that the levy of excess demand charges is to compensate the loss arising due to the said contingencies and that the levy of excess demand is lawful.

4.12 It is not in dispute that the Southern Railway avail electrical energy from multiple points of supply ever since 1965. The Respondents did not deny the contentions of the Petitioner that during supply extensions, the total number of trains in the section actually decreases due to stopping of goods train and therefore the load on the grid decreases, notwithstanding the fact that the demand at the Railway Traction Sub-Station from where the supply is extended to the adjacent section increases. The Terms and Conditions of the Supply of Electricity issued under the Electricity (Supply) Act, 1948 were followed by TNEB till the Commission made the Electricity Supply Code in the year 2004 in exercise of the powers granted under Electricity Act, 2003.

Clause 7 of the said Terms and Conditions of Supply of Electricity provides as follows:-

“7.00 Special Terms and Conditions:

7.01 Subject to the provisions of Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948, the Board may stipulate special terms and conditions in specific cases for extending supply.”

4.13 The Petitioner having been a HT consumer of the TNEB drawing power from multiple points of supply of the TNEB constitute a unique type of consumer of the TNEB. Thus the B.P. (F.B.) No.17 dated 21-01-1998 was issued by the Board obviously as a Special Terms and Conditions as contemplated under clause 7.01 of the then existing Terms and Conditions of Supply considering the special manner of consumption of electricity by the Southern Railway.

4.14 It is evident from the B.P. (FB) No.17, dated 21-01-1998 that no peculiar or personal advantage or right enjoyable by the Southern Railway in derogation of a common right available in respect of other HT consumers has been conferred. Therefore, the said B.P. (FB) No.17, dated 21-01-1998 cannot be treated as a special privilege granted to the Southern Railway, since there is no other HT consumer who is similar to the Southern Railway. Thus the above B.P. cannot be said to be a concession granted to the Southern Railway. While Regulation 5 (2) (i) of the Supply Code deals with cases of HT consumer who draw power from a single point supply, the B.P. (FB) No.17, dated 21-01-1998 provided the Special Terms and Conditions applicable to Southern Railways who draw power from multiple points of supply. The said B.P. was not withdrawn by the TNEB even after 2004 i.e. after the Supply Code came into being, obviously for the above reason.

4.15 The next question that arises for consideration is whether the said B.P. (FB) No.17, dated 21-01-1998 is inconsistent with the provisions of the Electricity Act, 2003 or the Regulations made thereunder. The B.P. may be said to be inconsistent with the Regulation or the provisions of the Act only if the acceptance of the B.P. implies abrogation or abandonment of the Regulations or the provisions of the Act. The above B.P. is not incompatible with the said Regulation 5(2) (i) of the Electricity Supply Code for the reason that the said B.P. is applicable only to the case of Southern Railway considering the special nature of consumption of energy. Thus it can very well be given effect to simultaneously without abrogating the provisions of Regulation 5 (2) (i) of the Supply Code which is applicable to all HT consumers who draw power from single point of supply. Thus the Permanent B.P.(FB) No.17 (Technical Branch), dated 22-01-1998 issued by the TNEB under the Terms and Conditions of Supply of Electricity framed under the repealed Electricity (Supply) Act,

1948 cannot, therefore, be said to be inconsistent with the provisions of Regulation 5 (2) (i) of the Supply Code made under 2003 Act, much less any provisions of the 2003 Act.

4.16 Clause (a) of sub-section (2) of the section 185 provides interalia that anything done or any action taken or purported to have been done or taken etc. under repealed laws shall in so far as it is not inconsistent with the provisions of the 2003 Act, be deemed to have been done or taken under the corresponding provisions of the 2003 Act. The aforesaid B.P. No.17 issued by the erstwhile TNEB in pursuance of Terms and Conditions of Supply of Electricity made under the Electricity (Supply) Act, 1948 that were in vogue prior to the Electricity Act, 2003 being not inconsistent with the provisions of 2003 Act, the same stands saved by the said section 185 (2) and will continue to be so till provisions to the contrary are made.

4.17 That apart, if the impugned letter of the Respondent is to be given effect, then the existing right of the Petitioner conferred under B.P.(FB) No.17, dated 22-01-1998 will be lost and the Petitioner will be left without remedy for the sufferings as to the excess demand arising out of the fault which is squarely on the part of the Respondents. It is well settled that no one can take advantage of his own wrong.

For the foregoing reasons, the impugned letter is not tenable and liable to be withdrawn. The Commission orders accordingly.

No separate order is necessary in the I.A. and therefore the I.A. is closed.

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