

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.19 of 2014

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

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

Vs.

1. The State of Tamil Nadu
Represented by
The Secretary to Government
Energy (A2) Department
Fort St. George, Chennai – 600 009.
2. The Chairman
Tamil Nadu Generation and Distribution Corporation
Formerly Tamil Nadu Electricity Board
NPKRR Maligai, No.144, Anna Salai
Chennai - 600 002.
3. The Director (Finance)
Tamilnadu Generation and Distribution Corporation
Formerly Tamil Nadu Electricity Board
NPKRR Maligai, No.144, Anna Salai
Chennai – 600 002.

.... Respondents

Dates of hearing : 17-03-2014, 30-06-2014, 21-07-2014,
22-12-2014, 19-01-2015, 27-04-2015,
05-10-2015, 28-10-2015 and 13-11-2015

Date of order : 23-02-2016

The M.P.No.19 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.19 of 2014:-

The Prayer of the Petitioner in M.P.No.19 of 2014 is to fix the tariff for Railway Traction for the disputed period from December 2001 to March 2003 at the pre-revised tariff of Rs.150/kVA/month plus Rs.3.40/kWh plus 10 paise/unit as metro levy.

2. Contentions of the Petitioner:-

2.1. The Southern Railway is availing power supply from TANGEDCO for Electric Traction purposes presently through 23 supply points spread over the State of Tamil Nadu with a total Contracted Demand of 254.40 MVA and consuming about 712 MU per annum for Traction purposes. During the year 2001-02, the Petitioner availed power supply from the erstwhile TNEB for traction through 17 Traction Sub-stations located in Chennai and Salem (previously in Palakkad) Divisions.

2.2. 25 kV AC Electric Traction is in existence in Tamil Nadu since 1964 and Government of Tamil Nadu (GOTN) has offered concessional tariff for Railway Traction during initial electrification from 1964 to 1982. From May 1982 onwards, the Government have withdrawn the concessional tariff and merged Railway Traction Tariff with HT Industrial Tariff.

2.3. The load on the Railway Traction Sub-stations is constituted only by the moving trains. Due to the moving nature of the load, there are instances of occasionally exceeding the Contracted Maximum Demand for reasons beyond the control of Railways. In the “two part tariff” structure adopted for Railway Traction, Railways had to incur excess MD Surcharges for the whole month for the occasional exceeding of Contracted Demand due to bunching of trains for reasons beyond the control of Railways. Hence repeated requests were made to GOTN and TNEB to adopt “single part tariff” for Railway Traction at a cost not exceeding the average cost of power to industries. However, the GOTN vide G.O.Ms. 95 of 2001 dated 28-11-2001 issued a Tariff Revision Order wherein “single part” tariff was granted to Railway Traction, as requested by Railways but disproportionately increased the tariff much higher than that to the industries. Aggrieved by this, the Railway has filed an appeal before the Madras High Court in W.P.No.6852 of 2002.

2.4. The High Court having found that there is genuine grievance to Railways, stayed the operation of the impugned G.O.Ms.No.95 of 2001 dated 28-11-2001 as far as it relates to the tariff revision to Railway Traction. Further the High Court having satisfied that there is enough case for consideration in the Writ Petition rendered their judgment on 28-03-2013 and directed that:

“7. Since the Tamil Nadu Electricity Regulatory Commission (the third respondent) is now functioning, which is the competent authority to decide the disputed tariff, both the parties are directed to approach the third respondent, namely the Tamil Nadu Electricity Regulatory Commission, who, in turn, shall hear the objections from the party concerned and pass suitable orders”.

The High Court also directed the Petitioner to pay an interim payment of Rs.18.0 crores to TNEB within a period of four weeks from the date of receipt of a copy of the order, which has been paid to the TNEB within the stipulated time.

2.5. The power supply for Railway Traction is availed for running train services for the transportation of passengers and goods throughout the length and breadth of the country for the benefit of the general public. Railways being a Government of India Department provide train services to the general public without any profit motive. The Southern Railway is running sub-urban and intra-state passenger services at an affordable cost to the common man of the State and helps the State Government in decongesting the cities.

2.6. Historically TNEB has been adopting a common Two-part Tariff for Railway Traction and other HT Industries, even though Railway Traction avails power supply directly from the 110 kV Grid, whilst other HT Industries avail power supply at various voltages from 11 kV to 110 kV through TNEB's Sub-Transmission & Distribution networks. The tariff adopted by TNEB for Railway Traction and HT Industries in Tamil Nadu five years prior to the impugned tariff revision is as below:

HT Tariff 1-*“Registered factories, tea estates, textiles, railway tractions, fertilizers, Salem Steel Plant, Heavy Water Plant, Caustic soda, Calcium Carbide, Aluminium & Potassium Chlorate, Software Industries including maintenance, service and training institutions and hardware units and all other industrial establishments”.*

Sl. No.	Tariff in force		MD Charges Rs/KVA	Energy Charges in Paise/Unit	Metro levy in Paise/Unit
	From	To			
1	01-03-1994	31-01-1995	85	210	10
2	01-02-1995	14-02-1997	100	240	10
3	15-02-1997	19-07-1998	125	280	10
4	20-07-1998	06-10-2000	150	320	10
5	07-01-2000	30-11-2001	150	340	10

2.7. The year wise total energy consumption, total charges paid and average cost per unit realized from Railway Traction in TNEB area for five years prior to the impugned tariff revision is as follows:

Sl. No.	Year	Total Energy consumed in million kWh	Total Charges paid in Rs.crore	Average cost per unit in paise
1	1997-98	448.12	154.58	344.96
2	1998-99	437.13	162.59	371.94
3	1999-00	441.28	172.26	390.35
4	2000-01	462.13	190.37	411.94
5	2000-02	452.40	189.03	417.84

2.8. The Railway was continuously pursuing the Government of Tamil Nadu and TNEB for a reduced tariff for Railway Traction compared to HT Industries for the reasons:-

- i. Industrial loads are confined to their campus and concentrated and as such the load factor of the industries are characteristically high.
- ii. On the other hand the load on the Railway Traction Sub-stations is constituted only by the moving trains. Every Traction Sub-station feeds to a distance of 40 to 60 km (20 to 30 km on either side). Every train on its journey from the originating station to the destination station passes through several Traction Sub-stations enroute and "Demand" is registered for the same train at every Traction sub-station throughout its route. Hence, the load factor of the Railway Traction Sub-stations is characteristically low.
- iii. Hence in the "Two part Tariff" regime, for the same tariff the average cost per unit for Railway Traction becomes much higher than that for the industries.

2.9. A formal representation was submitted to the Commission on 19-10-2001 seeking a reasonable tariff for Railway Traction in Tamil Nadu. The Commission through their Letter No. TNERC/AEE/F113/D553/2001, dated 31-10-2001 has replied as follows:-

- (i) *We will consider your views at the time of tariff revision.*
- (ii) *Whenever Tamil Nadu Electricity Board comes up with the proposal for Tariff Revision Orders, there will be a public hearing and the points of the Railway may be brought before the Commission during such public hearings.*

2.10. To the surprise of the Petitioner, GOTN through G.O.Ms.95, dated 28-11-2001 has revised the tariff and increased the traction tariff exorbitantly causing tariff shock to Southern Railway. Aggrieved, the Southern Railway filed Writ Petitions before the High Court of Madras with the prayers:

- (i) *to stay the operations of the impugned G.O.Ms.95 dated 28-11-2001 of Government of Tamil Nadu as far as it relates to the tariff fixation for Railway Traction; and*
- (ii) *to direct the GOTN to constitute the Tamil Nadu Electricity Regulatory Commission under the Electricity Regulatory Commissions Act, 1998 to consider the grievances of Railway in respect of fixation of tariff for Railway Traction by affording due opportunity as contemplated under the Act.*

2.11. The Madras High Court having found that there is genuine grievance to Railways, stayed the operation of the impugned G.O.Ms. No.95 of 2001 dated 28-11-2001 as far as it related to the tariff revision to Railway Traction. During the operation of the stay, the current consumption charges were claimed by the TNEB at the pre-revised tariff of Rs.150/kVA demand / month plus Rs.3.40 / kWh plus 10 paise/ kWh as Metro levy. Reduced tariff for traction supply is sought since energy is consumed for Railway Traction at the Grid voltage of 110 kV and that at 110 kV both energy loss and infrastructure costs to TNEB are much less compared to supplying energy at 11 kV. Correspondingly energy charges at 110 kV ought to be lower than that for 11 kV HT tariff at least by the amount of reduction in the Transmission and Distribution losses from 11 kV to 110 kV.

2.12. Apart from the reduced infrastructure charges for supplying energy at 110 kV, the trains while on the run from the originating station to the destination runs through the feeding zones of several contiguous traction sub-stations registering "demand" at every feeding point; but the load on the grid remains fairly constant. Thus, the same train registers demand at multiple points causing payment of demand charges at

multiple points for the same train thus inflates the average cost per unit for Railway Traction. Thus in all fairness the demand charges for Railway Traction ought to be fixed lower than that for the industries availing power supply at 11 kV.

2.13. The Commission in their first Tariff Order TP-1 of 2002 dated 15-03-2003 have acknowledged the grievances of this Railway and addressed the above issues to some extent by restoring the Railway Traction Tariff to HT-I-A, merging with Industrial Tariff as extracted hereunder:-

“2.3 Railway Tariff

2.3.1 Objections by Railways

The CEE, Southern Railways, Chennai has objected to the application of the proposed tariff”.

X X X X

Regarding Railway Traction (HT-1B) the Southern Railways have submitted that they have already filed a petition before the Madras High Court against the tariff increase by TNEB in 2001. They have stated that the tariff proposed for the Railways is too high considering their contribution to urban and long distance transport and environment protection. They have submitted that their tariff should not be more than the industrial tariffs. They have pleaded for a tariff equivalent to TNEBs cost of supply plus a return of 3%. They have also objected to the differential tariff for Metro and Non-Metro regions. They have submitted that they do not benefit from the underground cables in the metro areas, and that they draw from only one sub-station through underground cables.

Mr.Bansal, CEE, Southern Railway, said during the SAC meeting that though the cost of supply to Railways is around Rs.3 per unit, the Railways are charged much higher at Rs.4.60 per unit. This is hampering their moves to add new services, as the Railways are providing cross-subsidy to the extent of around Rs.75 crore every year.

2.3.2.TNEB’s Response to the objection from Railways

The TNEB has submitted that the tariff for Railways is higher on account of the cross-subsidy and if the Railways’ tariff is reduced, then the tariff for some other categories will have to be increased correspondingly. The TNEB has added that it has attempted to reduce the level of cross-subsidy given by the Railways by not proposing any increase in the tariff, though the TNEB has proposed increase in the tariff for most other categories.

2.3.3. Commission’s Ruling on the issues raised by Railways

The Commission, in appreciation of the issues raised by Railways, conducted an exclusive hearing. The inclusion of railway colonies under Low Tension Tariff I-C and merger of existing HT tariff I-B with High Tension Tariff I-A is expected to solve the problem. Merger of metro and non-metro rates is being implemented in this

revision. Regarding the suggested provision for rebates for advance payments, they have been taken note of for consideration at the appropriate time.”

X X X X

“7.15 Railway Tariffs

The Commission has restored the original category (prior to the changes made in GO Ms 95) for the HT supply for traction by merging the existing HT Tariff 1B with HT Tariff 1A. Their grievance on the domestic consumption rates is almost solved by notifying them to come under the newly introduced notified LT Tariff IC for such bulk consumption to domestic purposes”.

2.14. Merger of the Railway Traction Tariff HT-1B did not remove the grievance of the Railway as the plea was for introduction of a separate EHT tariff category for Railway Traction with reduced demand and energy charges compared to HT industries. Hence, the Petitioners continued to represent before the Commission for a separate tariff category for Railway Traction. However, the TNEB did not come before the Commission for revision of retail tariff till January 2010. The Commission having accepted the reasoning of the Petitioner for a separate category of tariff for Railway Traction with reduced tariff, introduced a HT tariff category HT-1B in the second tariff order issued during July 2010 and continued in the subsequent tariff orders issued during March 2012 and June 2013.

2.15. In the subsequent Tariff Orders, the Commission has continued the separate tariff category for Railway Traction and ordered demand charges reduced by Rs.50/kVA compared to industries as detailed below:-

Sl. No.	Tariff Order No. & Date	Industrial Tariff HT – 1 A		Railway Traction Tariff HT – 1B	
		Demand Charges Rs./kVA	Energy Charges Rs./kWh	Demand Charges Rs./kVA	Energy Charges Rs./kWh
1	T.O.No.3 of 2010 dated 31-07-2010	300	4.00	250	4.00
2	T.O.No.1 of 2012 dated 30-03-2012	300	5.50	250	5.50
3	T.O.No.1 of 2013 dated 20-06-2013	300	5.50	250	5.50

2.16. As submitted above in para 2-4, in the impugned G.O.Ms.No.95, dated 28-11-2001 though GOTN has granted a "Single Part Tariff" for Railway traction as requested by the Railway, increased the Traction Tariff exorbitantly from Rs.3.40 /kWh to Rs.4.60 /kWh (plus Rs.0.10 per unit metro levy) whilst industrial tariff was reduced by 20 paise per unit from Rs.3.40/kWh to Rs.3.20/kWh. Aggrieved by this tariff shock, this Railway filed Writ Petition before the High Court of Madras in W.P.No. 6852 of 2002. The High Court of Madras, having satisfied that there is genuine grievance for consideration in the Writ Petition of Southern Railway, have stayed the operation of the impugned G.O.Ms.No.95 dated 28-11-2001 and the bill was raised by TNEB at the tariff prevailing before the tariff revision by the impugned Tariff Order of Government of Tamil Nadu.

2.17. In CMA No.2298 of 2002 batch of appeals filed by J.K.Pharmachem Limited and others against the orders of the Commission in R.P.Nos.1, 11, 52, 54, 55 & 57 of 2002 dated 31-10-2002, the ASG appearing for the Respondent TNEB and GOTN has admitted that the tariff has been disproportionately increased in the impugned G.O.Ms.No.95 dated 28-11-2001 that the increase in tariff for industries is 7.22% while the increase in tariff for Railway Traction is 18.56%. Admittedly the average cost of energy realized by TNEB from Railway Traction during the year 2001-02 was 407.25 paise / unit while the average cost of supply of TNEB is 305 paise / unit, which shows that an exorbitant cross subsidy element of 33.5% is loaded to the non-profit making public utility organization Railway Traction even before the impugned Tariff Order. The tariff was further increased by 18.56% in the impugned Tariff Order much more than for the Industrial Consumers i.e. 7.22%.

2.18. The portions of the judgment of the High Court dated 28-11-2002 made in CMA No.2298 of 2002 are as below:-

“14. Finally, let us consider whether the quantum or rate as determined by the State Government is reasonable or not? Here again, learned Additional Advocate General has brought to our notice that while very same contention was raised before the Commission stating that the tariff rates fixed in G.O.Ms.No.95 by the State Government is arbitrary and unreasonable, it was pointed out before the Commission the increase of tariff made in the impugned G.O.Ms.No.95 is only 7.22 percent for HT consumers” “The learned Additional Advocate General has placed comparative statement showing that the tariff rate fixed in G.O.Ms.No.95” “Apart from the above factual findings of the Commission, learned Additional Advocate General has also brought to our notice some more details relating to additional revenue due to tariff revision for a full year and overall cost of power, which are extracted hereunder:

“Additional Revenue due to Tariff Revision for a full year”

High Tension

	Percentage increased	in Crores
HT Industries	7.22	238.59
Railway Traction	18.56	30.24
Recognised Educational Institution	24.24	36.23
Commercial	17.39	80.25
Supply to Pondy	60.43	21.08
REC Society	105.00	21.00
	-----	427.39 crores

“The above statistics show the percentage of increase insofar as HT industries is concerned is only 7.22%.

Overall Cost of Power

1999-2000	259 Ps/Unit
2000-2001	266 Ps/Unit
2001-2002	305 Ps/Unit
2002-2003	328 Ps/Unit.”

2.19. The tariff for Railway Traction was admittedly fixed much higher than the average cost of supply and also higher than the tariff charged to other industrial consumers who are working on profit motive. The Southern Railway is not a commercial organization having profit motive. The “Operating Ratio” of Southern Railway, which is the percentage of the working expenses to gross earnings,

published annually by the Ministry of Railways, Railway Board reveals that Southern Railway is making loss throughout. This would be evident from the figures published in the Annual Statistical Statement of Indian Railway by Government of India, Ministry of Railways from the year 2001-02 to 2011-12 and the provisional figures for 2012-13 and 2013-14.

2.20. In spite of making huge loss, Railways being a public utility organization of Government of India, are committed to extend several concessions for various class of people as given below:-

Categories of Passengers granted concession in train fare

Sl. No.	Category of Passenger	Concession upto
1	Disabled Passenger	75%
2	Patients (11 categories)	75%
3	Senior Citizens	50%
4	Awardees	75%
5	War Widows	75%
6	Students	75%
7	Scouts & Guides	50%
8	Youths (camps)	50%
9	Unemployed youths for interview	100%
10	Kissans (for training and camps)	50%
11	Artists & Sports Persons	75%
12	Medical Professionals	25%
13	Others for All India Conference etc.	25%
14	Izzat MST(workers having monthly income not exceeding Rs.1500/- per month)	Rs.25/- upto 100 km

2.21. The rail fares are kept much cheaper than that of State Road Transports for making it affordable to common man. The railways not being a commercial entity but a public service utility with no profit motive the tariff design for Railway Traction should take into consideration the above facts also and the cross subsidy element has to be kept at the barest minimum if it cannot be avoided altogether.

2.22. Article 287 of the Constitution of India embodies the need for reasonable tariff for Railway which as stated below:-

“287. Save insofar as Parliament may by law otherwise provide, no law of a State shall impose, or authorize the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is-

(a) Consumed by the Government of India, or sold to the Government of India, for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway, and any such law imposing, or authorizing the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity”.

Though a plain reading of the said Article seems that it relates to levy of Electricity Tax, the letter and spirit of the Article accentuate that the PRICE (not the rate) charged for the electricity consumed in the construction, maintenance and operation of Railway should be less than that charged to other consumers of substantial quantity. As such the tariff determined by the impugned G.O.Ms.No.95 dated 28-11-2001 is not in consonance to the underlying principle laid down in the Constitution.

2.23. The average cost of supply of electricity for the year 2002-03 as stated in para 7.4 of the Tariff Order No.T.P.01 of 2002 is Rs.3.18/unit. But the cost per unit realized by TNEB from Railway Traction is Rs.4.62/unit which is 45.28% more than the average cost of supply.

2.24. Railway has consumed 607.98 MU from the 17 supply points existed during the disputed period from December 2001 to March 2003 and paid Rs.247.60 crores as current consumption charges constituting an average cost of Rs.4.07/Unit at the pre-revised tariff of Rs.150/kVA/month plus Rs.3.40/kWh plus 10 paise/unit as metro levy. This implies that the Respondent TNEB has already realized Rs.54.11 crore more than the cost of supply as cross subsidy from Railway Traction even at the pre-revised rates.

2.25. The above issues have been submitted before the Commission in the objection petition filed in respect of the tariff petition for the year 2003-04. The Commission and TNEB have considered the plea of Railways in the Tariff Order T.P.No.1 of 2002 dated 15-03-2003 as stated therein.

2.26. The Commission in their second and subsequent Tariff Order No.3 of 2010 dated 31-07-2010 have acceded the plea of Railways to fix a reduced demand charges as under:-

“9.10. Approach to Tariff Rates

9.10.1. The Commission has accepted the revised tariff rates proposed by the TNEB except the following:-

(1) Railway Traction

(a) The Southern Railway made the following submission before the Commission

(i) The recorded maximum demand in the traction substations varies depending on the number of trains running in the feeding zone. The traffic pattern is not constant due to good trains, seasonal trains and bunching of trains due to force majeure conditions.

(ii) Due to varying nature of loads which is not practicable to control the recorded demand within the band of 90% to 100% of contracted maximum demand.

(iii) The trains while on the run from the originating station to the destination runs through the feeding zones of several contiguous traction sub-stations registering “demand” at every feeding point; but the load on the grid remains fairly constant. Thus, the same train

registers demand at multiple points causing payment of demand charges at multiple points for the same train.

- (b) *The Commission may consider the following:-*
- (i) *Simultaneous maximum demand of contiguous traction substations connected to the same grid may be adopted for billing purpose; or*
 - (ii) *The demand charges may be reduced by 33% or*
 - (iii) *A single part tariff with energy charges (without demand charges) not exceeding the average rate of realization from EHT industrial consumer (in two part tariff).*

9.10.2. *The Commission considered the submission and decided the following:-*

- (1) *The single part tariff cannot be granted for the Railway Traction service as the services are having specific contract demand.*
- (2) *The simultaneous demand recorded in the several contiguous traction sub-stations (service connection point) cannot be assigned to a single point for the purpose of billing.*
- (3) *The demand charges for the Railway Traction is revised and fixed at Rs.250 per kVA per month.*
- (4) *Railway's demand to classify the Railway Level Crossing along with the tariff applicable for Public Lighting is accepted.*

Considering the above, the Commission continued to adopt reduced demand charges for Railway Traction in the subsequent tariff orders also.

3. Contentions of the Respondent 2 & 3:-

3.1. Section 3 of the Tamil Nadu Revision of Tariff Rates on supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979) laid down that, the tariff rates payable to the Tamil Nadu Electricity Board, by any consumer on the electrical energy supplied by the Board, shall be as specified in the Schedule to the said Act. Section 4 enabled the State Government to amend the provision of the Schedule to the said Act, after taking into account the cost of generation of energy and such other matters as may be prescribed. The schedule to the said Act contained the different tariff rates payable by the different classes of consumers. The Government have been issuing Notification amending the Schedule to the said Act from time to time.

3.2. The GOTN issued a Tariff Revision Order vide G.O.Ms.No.95 dated 28-11-2001 revising the tariff which came into effect from 01-12-2001. Based on the repeated requests made by the Railways to adopt single part tariff to Railway Traction, the GOTN fixed the single part tariff to the Railway Traction under HT Tariff 1B, the details of which are furnished below:-

Particulars	Prior to (Revision) 01-12-2001		With effect from 01-12-2001	
	Energy Charges (Rs./ Unit)	Demand charges (Rs./ KVA / Month)	Energy Charges (Rs./ Unit)	Demand charges (Rs./ KVA / Month)
Metro Areas	3.50	150	4.70	Nil
Non-Metro Areas	3.40	150	4.60	Nil

3.3. The Southern Railway challenged the tariff determined by the GOTN in G.O.Ms.No.95, Energy, dated 28-11-2001 which came into effect from 01-12-2001, before the Madras High Court in W.P.No.6852 of 2002. The High Court disposed the said Writ Petition with the following observations on 28-03-2013:-

“6. From the perusal of the entire papers, it is seen that the impugned G.O. has been issued against the Petitioner Southern Railway by enhancing the tariff rate. It is also seen that dispute period is only from 01-12-2001 to 15-05-2003. It appears that similar consumer, namely, Coimbatore Stock Exchange Limited, has challenged the tariff rate before the Hon’ble Supreme Court and the Hon’ble Supreme Court observed as follows:-

“The tariff determined for the Railways is in conformity with the demand made by it and we do not find any error in the impugned judgment whereby the High Court, rejected their grievance in the matter of fixation of tariff.”

7. Since the Tamil Nadu Electricity Regulatory Commission (the third Respondent) is now functioning which is the competent authority to decide the disputed tariff both the parties are directed to approach the third Respondent, namely, the Tamil Nadu Electricity Regulatory Commission, who, in turn, shall hear the objections from the party concerned and pass suitable orders.

8. It is represented that a sum of Rs.112 crores is due from the Petitioner. From the perusal of the entire papers and after hearing the submissions made by either side, it is clear that the disputed amount is only Rs.37 crores. Therefore, the

Petitioner is directed to pay a sum of Rs.18 crores to the Respondent Board within a period of four weeks from the date of receipt of a copy of this order”.

Based on the said orders of the High Court, Southern Railway has paid the amount of Rs.18 crores to TANGEDCO and filed the present petition before the Commission to settle the issue.

3.4. Taking note of the large revenue deficit of TNEB and various other relevant factors, the GOTN issued orders revising the tariff vide G.O.Ms.No.95, Energy Department, dated 28-11-2001 which came into effect from 01-12-2001. The revenue deficit of TNEB for the year 2001-02 was estimated as Rs.2747.59 crores, which was approximately 33% of revenue. Taking into account, the above facts the tariff rates have been increased to an overall extent of 16% and to a lesser extent in respect of Railway traction. It may be relevant to state that as per the Electricity (Supply) Act, 1948, the Board has to achieve a minimum of 3% rate of return on the net fixed assets as at the beginning of the financial year. However, even after the impugned tariff revision, still there was revenue deficit of Rs.2302 crores for the financial year 2001-02. Thus, there was a vast revenue deficit which was to be bridged to some extent thereby necessitating the issuance of the impugned Government Orders. The exercise of the said power was absolutely necessary in public interest so as to ensure the proper and effective functioning of the State Electricity Board, which is a public utility.

3.5. Some categories of consumers filed Writ Petitions, before the Madras High Court during the year 2001 in W.P.Nos.23807 and 25210 of 2001 challenging the powers and jurisdiction of the GOTN to issue the G.O.No.95 dated 28-11-2001 revising the tariff. The High Court on 14-06-2002 dismissed the W.P.Nos 23807 and

25210 of 2001 and upheld the G.O.Ms.No.95 dated 28-11-2001 issued by the GOTN. In those cases, the High Court took into account the absence of functional role of the Commission during the relevant period when G.O.Ms.No.95 was passed and also the public interest for the revision of tariff upwards. The judgment has covered both aspects namely, the power of the GOTN to issue the G.O. and the quantum of tariff. Particularly the High Court has observed that “we cannot ignore the public interest involved as there had been necessity to revise the tariff of electrical energy by upward revision to make the electricity supply financially viable”.

3.6. In the judgment, the High Court has made it clear that future revision of power tariff shall be done only by the Commission. The expression “future power tariff revision” occurring in the judgment will indicate that Commission can exercise only future power tariff revision under the Electricity Regulatory Commission Act and it cannot interfere with the past power tariff revision already made in G.O.Ms.No.95 dated 28-11-2001 by the State Government in terms of section 4 of the Tamil Nadu Act 1 of 1979. The judgment of the High Court not only covers the power and jurisdiction of the State Government to fix the tariff but also impliedly covers the quantum of tariff in view of the fact that the challenge made before the High Court was not only with regard to the power of the State Government to fix power tariff but also in regard to the quantum of escalation in tariff.

3.7. G.O.Ms.No.95, dated 28-11-2001 has been upheld by the High Court and hence it cannot be said to be unenforceable since there cannot be an order which is held valid but not enforceable. Further, as per proviso 4 (2) of the Tariff Regulations framed by the Commission, the existing tariff fixed shall continue until the revised

tariff is fixed by the Commission. In terms of the said tariff regulation read with the High Court's judgment the then existing tariff fixed under G.O.Ms.No.95, dated 28-11-2001 shall have to continue till such time the Commission fixed the new tariff in accordance with the provisions of the ERC Act.

3.8. Under section 12 of the Electricity Regulatory Commission Act read with section 23, the Commission has been conferred with the power of a Civil Court while discharging its functions under sections 22 and 29 of the Electricity Regulatory Commission Act, and hence it can only review its decisions, directions and orders and it cannot review the orders issued in G.O.Ms.No.95, dated 28-11-2001 passed by the GOTN.

3.9. Some of the Petitioners filed a petition seeking stay and review of the G.O.No.95, dated 28-11-2001 before the Commission in R.P.Nos.1 to 252 of 2002. The Commission dismissed the above petitions on 31-10-2002 with the following observation

“if this Commission seeks to review the G.O.Ms.No.95 which has been held to be valid by the Hon'ble High Court in its judgment referred to above, then it would amount to re-writing the judgment of the Hon'ble High Court itself and such a course of action could even amount to contempt of the Hon'ble High Court of Madras. Further, the Division Bench of the Hon'ble High Court of Madras in the case of Shanmugaraja Spinning Mills (P) Ltd., Vs. The Superintending Engineer (i/c) Periyar Electricity System, Erode has held that the State Government has the power to amend the Schedule of Tamil Nadu Act 1 of 1979 which relates to fixation of tariff and the said power to amend the schedule to the Act is a conditional legislation”.

3.10. Against the order of the Commission some of the consumers filed an appeal petition before the High Court of Madras in CMA Nos.2320, 2231 to 2234 of 2002 and CMP Nos.16556, 16729, 16782 to 16788 of 2002. The High Court dismissed

the appeal petitions and directed the appellants to remit the arrears in 10 equal monthly instalments.

3.11. In view of the said decision of the Division Bench of High Court in W.P.No.23807 and 25219 of 2001 as well as the judgment of the High Court rendered in CMA Nos.2320, 2231 to 2234 of 2002 and CMP Nos.16556, 16729, 16782 to 16788 of 2002 and in view of this order of the Commission in R.P.No.1 of 2002 to 252 of 2002, the Commission need not review the G.O.Ms.No.95, dated 28-11-2011 at this distant period of time as already a decision has been taken by the Commission with regard to review of the G.O.Ms.No.95 issued by the GOTN.

3.12. If the Commission now proceeds to fix the tariff for Railway Traction with retrospective effect for the period from 01-12-2001 to 15-03-2003, such an action would have the effect of superseding the tariff notification issued in G.O.Ms.No.95 dated 28-11-2001 which has been upheld by the High Court of Madras. Further, according to the proviso 4 (2) of the Tamil Nadu Electricity Regulatory Commission Tariff Regulation, 2002, the tariff fixed in G.O.Ms.No.95 dated 28-11-2001 shall have to continue till the new tariff determined by the Commission i.e. till the tariff notified by the Commission on 15-03-2003.

3.13. The Government have taken into account the then existing circumstances and arrived at the tariff for Railways in a just and equitable manner in exercise of the legislative power to determine tariff. Therefore, ends of justice require that the tariff fixed by the Government in G.O.Ms.No.95 dated 28-11-2001 may be sustained and the Respondents are to be directed to pay the difference in tariff with BPSC.

4. Contentions of the First Respondent, the State of Tamil Nadu:-

4.1. Section 3 of the Tamil Nadu Revision of Tariff Rates on supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979) laid down that, the tariff rates payable to the Tamil Nadu Electricity Board, by any consumer on the electrical energy supplied by the Board, shall be as specified in the Schedule to the said Act. Section 4 enabled the State Government to amend the provisions of the Schedule to the said Act, after taking into account the cost of production of energy and such other matters as may be prescribed. The schedule to the said Act contained the different tariff rates payable by the different classes of consumers. The Government have been issuing Notification amending the Schedule to the said Act from time to time. In accordance with the power vested with them, the GOTN issued a Tariff Revision Order vide G.O.Ms.No.95 dated 28-11-2001 revising the tariff which came into effect from 01-12-2001. Based on the Respondent requests made by the Railways to the GOTN to adopt single part tariff to Railway Traction, the GOTN fixed the single part tariff to the Respondent's Railway Traction under HT Tariff 1B. The details of which are furnished below:-

Particulars	Prior to Revision (01-12-2001)		With effect from 01-12-2001	
	Energy Charges (Rs./Unit)	Demand Charges (Rs./KVA/ Month)	Energy Charges (Rs./Unit)	Demand Charges (Rs./KVA/ Month)
Metro Areas	3.50	150	4.70	Nil
Non-Metro Areas	3.40	150	4.60	Nil

4.2. The Southern Railway challenged the tariff determined by the GOTN in G.O.Ms.No.95, Energy, dated 28-11-2001 which came into effect from 01-12-2001, before the Madras High Court in W.P.No.6852 of 2002. The High Court

disposed the petition on 28-03-2013 by making the following observations in para 6,7 and 8:

“6. From the perusal of the entire papers, it is seen that the impugned G.O. has been issued against the Petitioner Southern Railway by enhancing the tariff rate. It is also seen that dispute period is only from 01-12-2001 to 15-05-2003. It appears that similar consumer, namely, Coimbatore Stock Exchange Limited, has challenged the tariff rate before the Hon’ble Supreme Court and the Hon’ble Supreme Court observed as follows:-

The tariff determined for the Railways is in conformity with the demand made by it and we do not find any error in the impugned judgment whereby the High Court, rejected their grievance in the matter of fixation of tariff.

7. Since the Tamil Nadu Electricity Regulatory Commission (the third Respondent) is now functioning, which is the competent authority to decide the disputed tariff, both the parties are directed to approach the third Respondent, namely, the Tamil Nadu Electricity Regulatory Commission, who, in turn, shall hear the objections from the party concerned and pass suitable orders.

8. It is represented that a sum of Rs.112 crores is due from the Petitioner. From the perusal of the entire papers and after hearing the submissions made by either side, it is clear that the disputed amount is only Rs.37 crores. Therefore, the Petitioner is directed to pay a sum of Rs.18 crores to the Respondent Board within a period of four weeks from the date of receipt of a copy of this order.”

Based on the orders of the High Court, Southern Railway has paid the amount of Rs.18 crores to TANGEDCO and filed the present petition before the Commission to settle the issue.

4.3. The actual increase in tariff rates ordered in the impugned G.O., works out to a mere 13.5% which is not an exorbitant one. The tariff revision is very reasonable since it is well within the overall increase of 16% made in the impugned G.O. Besides, the increase in the tariff during the past four years is less than 2.2% only whereas the cost of distribution of electricity has increased by 47.34% during the corresponding period. Only based on the repeated requests made by Southern Railway to the GOTN and TNEB to fix single part tariff to railway traction due to the reason that the load on the railway traction sub-stations is constituted only by the moving trains, the GOTN fixed the single part tariff to the Railway Traction by

omitting the demand charges. It is not fair on the part of the Petitioner, to contest the quantum of tariff since single part tariff was introduced for railway traction.

4.4. The Revision Petitions were filed by the industrial consumers challenging the tariff revision in the impugned G.O.Ms.No.95 dated 28-11-2001 before the Commission that the tariff has been revised in arbitrary and unreasonable manner by stating that cost of supply, cross subsidy and the tariff increase to the domestic consumers was much higher than the HT consumers and HT consumers are already in subsidizing group and hence, the rate of increase in tariff to HT consumers was lower than to subsidized group of consumers such as domestic consumers. The Commission while disposing the above petitions observed that the objections to the quantum of tariff that it is arbitrary and unreasonable are not substantiated by the learned counsels for the Petitioners.

4.5. The Tamil Nadu Electricity Board has to revise the tariff rates for various categories of consumers as and when required to partially bridge the revenue gap due to the ever increasing cost of coal and other raw materials and other overhead costs and fixing tariff to Railway Traction has no linking with industrial tariff and there is no regulations that tariff for Railway Traction should be less than industrial tariff. The following table shows the cost and revenue realization from the Railway Traction from the year 2000-01 to 2002-03.

Year	Cost (Rs./Unit)	Railway Traction	
		Rate of realization (Rs./Unit)	Cross subsidy
2000-01	2.65	3.94	48.68%
2001-02	3.05	4.03	32.13%
2002-03	3.28	4.20	28.04%

It is seen that the cross subsidy in the year 2002-03 was lesser than that of the year 2001-02.

4.6. Though the Railway Department is a public organization, it is run on commercial basis and largely on profit motive. Since the Railways are earning profit out of their business namely running of passenger and freight trains the Railway could not claim the concessional tariff for electric power supplied to them as a matter of public interest. The Southern Railway could not claim reduction in electricity tariff rates as the Railways in their policy of pricing have to make good the losses in some areas with profits in some other areas which rest with them only and the Tamil Nadu Electricity Board has nothing to do with these aspects and there is no justification for reduction in tariff rates at present from the rate fixed in the impugned G.O.

4.7. Article 287 of the Constitution of India provides that the price of electricity sold to the Government of India for consumption by that Government or to any such railway company shall be less by the amount of the tax on the price charged to other consumers of a substantial quantity of electricity. As provided in the Article, the exemption has been given to the Southern Railway only from tax on consumption of electricity for Railway Traction whereas it is being levied for the other substantial consumers such as industrial, commercial consumers. Hence, the contention of the Southern Railway in this regard can be rejected.

4.8. There is no regulation that tariff for Railway Traction should be equal to cost of supply and therefore tariff can be fixed with cross subsidy and with a percentage of cross subsidy for Railway Traction.

4.9. The Commission has fixed the two part tariff in the Tariff Order dated 15-03-2003. Considering the request of the Southern Railway, the Government of Tamil Nadu fixed the single part tariff to the Southern Railway in G.O.Ms.No.95 dated 28-11-2001. The Commission fixed the two part tariff by merging the Railway Traction services with the industrial consumers' category. The Commission took the above decision by overlooking the earlier decision of the Government of Tamil Nadu considering that there is no merit on extending the single part tariff to the Railway Traction services. Hence, the Southern Railway could not say that the tariff has been fixed higher in the impugned G.O. where the benefit has been extended as requested by the Southern Railway.

4.10. The Commission issued subsequent tariff order on 31-07-2010 with the continuation of two part tariff. While issuing the order on 31-07-2010, the Commission has not considered the submission of the Southern Railway to extend the single part tariff on the ground that Railway Traction services are having specific contract demand. Hence, extension of single part tariff in G.O.Ms.No.95, itself is great benefit to the Southern Railway where they did not control the demand within the sanctioned demand and they did not pay the excess demand charges over and above to the sanctioned demand.

4.11. The Government of Tamil Nadu issued the G.O.Ms.No.95 on 28-11-2001 in regard to revision of electricity tariff with effect from 01-12-2001. At the time of issue of G.O.Ms.No.95 to revise the tariff, there had been no validly constituted SERC which had legally come into being in view of the fact that no Chairperson has

assumed office and even the other two Members though appointed had not assumed office in the manner prescribed by the Act and the Rules. In G.O. (Ms). No.58, Energy, dated 17-03-1999, the constitution of SERC has not been completed and consequently there was neither a legally constituted SERC nor did the proposed SERC become effective so as to vest the functions contemplated by the Act in it and consequently divert the powers of the State Government conferred on it by Tamil Nadu Act, 1979.

4.12. Since the State Electricity Regulatory Commission was not fully functional, the Tamil Nadu Electricity Board was constrained to seek fixation of the tariff rates at appropriate levels as found necessary and orders issued by the Government to ensure efficient functioning of TNEB.

4.13. The TNEB has been preparing budget estimates for every year which is used to be placed before the State Legislature. The Budget estimates used to reflect the relevant factor for the purpose of enabling the State Government to amend the schedule to the Tamil Nadu Act 1 of 1979. It may be stated that the Budget estimate for the year 2000-2001 as placed before the Legislature disclosed a deficit of Rs.1272 crores, which was duly taken note of while the Government issued orders on 07-01-2000 in G.O.Ms.No.3, Energy Department, increasing the tariff rates payable by various classes of consumers marginally. The Budget estimate for the year 2001-02 of the Tamil Nadu Electricity Board was prepared and placed before the State Legislature which disclosed the fact that there was a Net Revenue Gap of Rs.2747.59 crores.

4.14. Taking note of the large revenue deficit and the various other relevant factors: the Government was constrained to issue orders revising the tariff by G.O.Ms.No.95, Energy, dated 28-11-2001 which came into effect from 01-12-2001. As stated supra, the revenue deficit for the year 2001-02 was estimated as Rs.2747.59 crores, which is approximately 33% of its revenue. Taking into account, the above facts the tariff rates have been increased, to an overall extent of 16% and to a lesser extent to the Railway Traction. It may be relevant to state that as per the Electricity (Supply) Act, 1948 the Board is to achieve a minimum of 3% rate of return on the net fixed assets as at the beginning of the financial year. However, as stated already even after the impugned tariff revision, still there would be a revenue deficit of Rs.2302 crores for the financial year 2001-02.

4.15. The TNEB further submits that even after the tariff revision there would still be a revenue deficit of Rs.2302 crores for the financial year ending 31st March 2002. The aforesaid tariff revision was essentially made only in order to partially bridge the revenue deficit of the Board.

4.16. Tamil Nadu get the power not only from the Central Power sectors but also from independent power projects, wind generation, co-generation and captive power plants besides its own power stations and the cost of such generations had gone more than Rs.3 per KWH during 2001-02. This is being done only with a view to bridge the gap between the requirements and availability of power. Hence the unit cost in respect of power generated by NLC alone would not be taken into consideration while fixing tariff rates for the various categories of consumers including Railway Traction. Pricing by the Railways for its services has no relevance

to the fixation of tariff rates to be adopted for sale of energy by TNEB to its consumer namely the Railways herein.

4.17. For the consumption for the Railway Traction during peak hours of 6 am to 9 am and 6 pm to 9 pm no additional surcharge is levied like the industries and therefore there is no justification in providing concessional tariff for night hour consumption by them. Moreover, the Railways is not giving any concessions in demurrage charges to TNEB which is a public utility.

4.18. As seen from the facts stated above, there was a vast revenue deficit which was bridged to some extent necessitating the issuance of the impugned Government orders. The exercise of the said power was absolutely necessary in public interest so as to ensure the proper and effective functioning of the State Electricity Board, which is a public utility. Further, by the impugned orders, the increase in tariff in the case Railway Traction is only marginal.

4.19. The High Court of Madras on 14-06-2002 dismissed the W.P.Nos.23807 and 25210 of 2001 and upheld the G.O.Ms.No.95 dated 28-11-2001 issued by the Government of Tamil Nadu. In those cases, the High Court of Madras has taken into account the absence of functional role of the Commission during the relevant period when G.O.Ms.No.95 was passed and also the public interest for the revision of tariff upwards. The judgment has covered both aspects, namely, the power of the Government of Tamil Nadu to issue the G.O. and the quantum of tariff. Particularly the High Court has observed as *“we cannot ignore the public interest involved as*

there had been necessity to revise the tariff of electrical energy by upward revision to make the electricity supply financially viable”.

4.20. The High Court has made it clear that future revision of power tariff shall be done only by the Commission. The expression “future power tariff revision” occurring in the judgment will indicate that the Commission can exercise only future power tariff revision under the ERC Act and it cannot interfere with the past power tariff revision already made in G.O.Ms.No.95 dated 28-11-2001 by the State Government in terms of section 4 of the Tamil Nadu Act 1 of 1979. The judgment of the High Court not only covers the power and jurisdiction of the State Government to fix the tariff but also impliedly cover the quantum of tariff in view of the fact that the challenge made before the High Court was not only in regard to the power of the State Government to fix power tariff but also in regard to the power of the State Government to fix power tariff but also in regard to the quantum of escalation in tariff.

4.21. The G.O. Ms.No.95 dated 28-11-2001 has been upheld by the High Court and hence it cannot be said to be unenforceable since there cannot be an order which is held valid but not enforceable. Further, as per proviso to section 4 of the Tariff Regulations framed by the Commission, the existing tariff fixed shall continue until the revised tariff is fixed by the Commission. In terms of the said tariff regulation read with the High Court’s judgment then existing tariff fixed under G.O.Ms.No.95 dated 28-11-2001 shall have to continue till the Commission fixes the new tariff in accordance with the provisions of the ERC Act.

4.22. Some of the Petitioners filed a petition seeking stay and review of the G.O.No.95 dated 28-11-2001 before the Commission in RP No.1 of 2002 to 252 of 2002. The Commission dismissed the above petitions on 31-10-2002 with the following observation ... “if this Commission seeks to review the G.O.Ms.No.95 which has been held to be valid by the High Court in its judgment referred to above, then, it would amount to re-writing the judgment of the High Court itself and such a course of action could even amount to contempt of the High Court of Madras. Further, the Hon’ble Division Bench of the High Court of Madras in the case of *Shanmugaraja Spinning Mills (P) Ltd., Vs. The Superintending Engineer (i/c) Periyar Electricity System, Erode* has held that the State Government has the power to amend the *Schedule of Tamil Nadu Act 1 of 1979* which relates to fixation of tariff and the said power to amend the schedule to the Act is a conditional legislation”.

4.23. Against the order of the Commission, some of the consumers filed an appeal petition before the High Court of Madras in CMA Nos.2320, 2231 to 2234 of 2002 and CMP Nos.16556, 16729, 16782 to 16788 of 2002. The High Court of Madras dismissed the appeal petitions and directed the appellants to remit the arrears in 10 equal monthly instalments. In view of the said decision of the High Court in W.P.No.23807 and 25219 of 2001 as well as the judgment of the High Court rendered in CMA Nos.2320, 2231 to 2234 of 2002 and CMP Nos.16556, 16729, 16782 to 16788 of 2002 and order of the Commission dated 31-10-2002 made in R.P.No.1 of 2002 to 252 of 2002 the Commission need not to review the G.O.Ms.No.95 dated 28-11-2001 in any aspect both in quantum as well as jurisdiction which was already reviewed by the Commission.

4.24. If the Commission now proceeds to fix the tariff for Railway Traction with retrospective effect for the period from 01-12-2001 to 15-03-2003, such an action would have the effect of superseding the tariff notification issued in G.O.Ms.No.95 dated 28-11-2001 which has been upheld by the High Court of Madras. Further, according to the proviso Regulation 4 of the Tamil Nadu Electricity Regulatory Commission Tariff Regulation, 2002, the tariff fixed in G.O.Ms.No.95 dated 28-11-2001 shall have to continue till the new tariff determined by the Commission i.e. till the tariff notified by the Commission on 15-03-2003.

4.25. The Government have taken into account the then circumstances and arrived at the tariff for Railways in a just and equitable manner in exercise of the legislative power to determine tariff. Therefore, ends of justice require that the tariff fixed by the Government in G.O.Ms.No.95 may be sustained and the Petitioners are to be directed to pay the difference in tariff with BPSC.

4.26. Based on the submissions made above, by relying upon the order of the Madras High Court and the Commission upholding the impugned G.O.Ms.No.95 dated 28-11-2001 and the counter affidavit is filed before the Commission with a request to direct, the Southern Railway to remit the balance 19 crores in the disputed amount with the applicable belated payment surcharge from the date of G.O.Ms.No.95 dated 28-11-2001.

5. Written Submission filed by the Petitioner:-

5.1. 25 kV AC electric traction is in existence since 1964 in Southern Railway (Tamil Nadu). In order to promote electric traction in Tamil Nadu, GOTN & TNEB

have adopted concessional tariff for Railway Traction in the initial periods from 1964 to 1982. From 01-05-1982 onwards, right up to 30-11-2001, Railway traction in Tamil Nadu was brought under HT Tariff 1 on par with other HT industries.

5.2. In G.O.Ms.95 of 2001 GOTN has introduced a new tariff category HT-1B for Railway traction and increased the Railway traction tariff to be more than the HT industries. Aggrieved, the Southern Railway has filed a Writ Petition before the Hon'ble High Court of Madras in W.P. No.6852 of 2002.

5.3. An amount of Rs.37 crores has been assessed by the High Court as disputed amount being the difference between the amounts paid on the pre-revised tariff as per the stay granted by the High Court of Madras and the tariff fixed by the GOTN arbitrarily in G.O.Ms.No.95 of 2001. The Petitioner has paid Rs.18 crores to the Respondents and filed this Miscellaneous Petition before the Commission for redetermination of the tariff for Railway Traction for the period of December 2001 to March 2003.

5.4. The tariff for Railway Traction prevailing before the issue of the impugned tariff order in G.O.Ms.No.95 of 2001 by Government of Tamil Nadu from 1995 onwards is appended below:-

Sl. No.	Tariff in force		MD Charges Rs./KVA	Energy Charges in Paise / Unit	Metro Levy Paise / Unit
	From	To			
1	01-02-1995	14-02-1997	100	240	10
2	15-02-1997	19-07-1998	125	280	10
3	20-07-1998	06-10-2000	150	320	10
4	07-01-2000	30-11-2001	150	340	10

5.5 In the impugned tariff order, with effect from 01-12-2001 to 15-03-2003, a separate category for Railway Traction as HT-1B was introduced with single part tariff. The HT tariff under HT 1A and HT 1B are appended below:-

Sl. No.	Category	Demand charges Rs./kVA	Energy Charges (Rs./Unit)	Metro Levy Paise / Unit
1	HT 1A – all industries	300	3.20	10
2	HT 1B – Railway Traction	Nil	4.60	10

5.6. Average tariff worked out at 35% Load Factor and 0.9 Power Factor as approved by the APTEL in Appeal No.75 of 2011 (Southern Railway Vs. TNERC & TNEB) is as under:-

i.	Tariff existing before revision in G.O.Ms.No.95 of 2001 HT-1 = $[150/(24 \times 30 \times 0.35 \times 0.9)] + 3.40$	=	Rs.4.07/Unit
ii	Tariff fixed by Go TN in G.O.Ms.No.95 of 2001 HT-1A = $[300/(24 \times 30 \times 0.35 \times 0.9)] + 3.20$ HT-1B = $[0] + 4.60$	=	Rs.4.52/Unit Rs.4.60/Unit
iii	Tariff fixed by TNERC in T.P.No.1 of 2003 HT-1A = $[300/(24 \times 30 \times 0.35 \times 0.9)] + 3.50$ HT-1B = abolished	=	Rs.4.82/Unit
iv	Tariff fixed by TNERC in T.P.No.3 of 2010 HT-1A = $[300/(24 \times 30 \times 0.35 \times 0.9)] + 4.00$ HT-1B = $[250/(24 \times 30 \times 0.35 \times 0.9)] + 4.00$	= =	Rs.5.32/Unit Rs.5.10/Unit

The tariff fixed for Railway Traction in G.O.Ms.No.95 of 2001 is an aberration since all along Traction tariff was either on par with HT industrial tariff or lower than that except in the tariff under dispute.

5.7. The Government of Tamil Nadu and TNEB also adopted a concessional tariff for Railway Traction during the initial periods and later on started treating Railway Traction on par with HT industries. However, Government of Tamil Nadu through the impugned G.O.Ms.No.95 dated 28-11-2001 disproportionately increased the Railway Traction tariff to be much higher than the HT industrial tariff.

5.8. As already submitted before the Commission and to the High Court of Madras, in CMA No.2298 of 2002 and batch of appeals in the impugned tariff order issued by Government of Tamil Nadu in G.O.Ms.No.95 dated 28-11-2001, the tariff increase for HT industries is only 7.22% whereas the hike imposed on Railway Traction is 18.56% which is very much unreasonable. Thereupon, the High Court stayed the G.O. as far as it related to the tariff for Railway.

5.9. Owing to the stay granted by the High Court, the Respondent TNEB raised the bills for Railway Traction at the pre-revised rate of Rs.150/Kva demand and Rs.3.40/kWh during the period December 2001 to March 2003. The average cost of energy realized at this rate by the Respondent TNEB from Railway Traction was Rs.4.07/Unit.

5.10. During this period the overall average cost of energy for the Respondent TNEB, as submitted by the Respondent TNEB in CMA No.2298 of 2002 was Rs.3.28/unit. However, the actual overall cost of energy for the Respondent TNEB for the same period 2002-03 as assessed and approved by the Commission in their Tariff Order T.P.No.1 of 2003 dated 15-03-2003 was Rs.3.18/unit meaning that even with the stay on the operation of tariff revision proposed by the Respondents, TNEB has earned Rs.54.11 crore more than the average cost from Railway traction as Cross Subsidy at the rate of 89 paise per unit (Rs.4.07- Rs.3.18) for the total consumption during the period December 2001 to March 2003.

5.11. Considering the submissions of the Railway, the Commission in their Tariff Order T.P.1 of 2003 dated 15-03-2003 have reversed the tariff categorization of

Railway traction by GOTN in G.O.Ms.95 dated 28-11-2001 and brought Railway Traction tariff equal to HT Industries.

5.12. The Railway has further persuaded the Commission to bring down the Railway traction tariff below the HT Industrial Tariff and the Commission has acceded the request of the Railway in their 2nd Tariff Order, Order No.3 of 2010 dated 31-07-2010 and reduced the demand charges by Rs.50/kVA compared to HT industries as given below:-

Sl. No.	Category	Demand charges Rs./kVA	Energy charges Rs./kWH
1	HT 1A – all industries	300	4.00
2	HT 1B – Railway Traction	250	4.00

The same principle was continued in the 3rd and subsequent tariff orders of the Commission as detailed below:-

i. Tariff Order No.1 of 2012 dated 31-03-2012

Sl. No.	Category	Demand charges Rs./kVA	Energy charges Rs./kWH
1	HT 1A – all industries	300	5.50
2	HT 1B – Railway Traction	250	5.50

ii. Tariff Order No.1 of 2013 dated 20-06-2013

Sl. No.	Category	Demand charges Rs./kVA	Energy charges Rs./kWH
1	HT 1A – all industries	300	5.50
2	HT 1B – Railway Traction	250	5.50

iii. Tariff Order No.9 of 2014 dated 11-12-2014

Sl. No.	Category	Demand charges Rs./kVA	Energy charges Rs./kWH
1	HT 1A – all industries	350	6.35
2	HT 1B – Railway Traction	300	6.35

5.13. Since the Respondent TNEB have already collected Rs.54.11 crore over and above the average cost of supply at the pre-revised tariff itself, pursuant to the stay granted by the High Court on the tariff revision vide G.O.Ms.No.95 dated 28-11-2001, the Commission may be pleased to approve the tariff as paid and order refund of the interim payment of Rs.18 crores paid as per the direction of the Hon'ble High Court of Madras.

6. Written Submission filed by the Respondents 2 & 3 (TANGEDCO):-

6.1. The actual increase in tariff rates to Southern Railway ordered in the impugned G.O., works out to mere 13.5% which may be construed as not an exorbitant one. Further, the tariff revision appears to be very reasonable, since it is well within the overall increase of 16% made in the impugned G.O. Besides, the increase in the tariff during the past four years is less than 2.2% only whereas the cost of supply of electricity has increased by 47.34% during the corresponding period. Further, only based on the repeated requests made by Southern Railway to the Government of Tamil Nadu to fix single part tariff to Railway traction, due to the reason that the load on the Railway traction sub-stations is constituted only by the moving trains, the Government of Tamil Nadu fixed the single part tariff to the Railway Traction omitting the demand charges, thereby differentiating the Petitioner from other HT consumers by giving concession. Therefore, it is not fair on the part of the Petitioner, to further dispute the quantum of tariff, since single part tariff was introduced for Railway traction as a concession which cannot be claimed as a matter of right.

6.2. The contention of the Petitioner that the tariff determined to Railway Traction is higher than industrial consumers is not correct. TNEB has to revise the tariff rates for various categories of consumers as and when required to atleast partially bridge the revenue gap due to the ever increasing cost of coal and other raw materials and other overhead costs. Even then calculation as per industrial tariff for the given number of units would reveal that the contention of the Petitioner is not correct.

6.3. The claim of the Petitioner that Article 287 of the Constitution of India provided that the price of electricity sold to the Government of India for consumption by the Government or to any such railway company shall be less by the amount of the tax, than the price charged to other consumers for a substantial quantity of electricity is also not correct. As provided in the said Article, the exemption has been given to the Southern Railway only from tax on consumption of the electricity for Railway Traction which is being levied for the other substantial consumers such as HT Industrial, Commercial consumers. Hence, the contention of the Southern Railway in this regard should be rejected summarily. Further, the APTEL in its order dated 23-05-2012 in Appeal No.75 of 2011 has concluded that the Article 287 does not deal with tariff, much less with the plea of Railway that it provides for lower tariff for Railways as compared to other HT consumers. It is a settled law as laid down by the Appellate Tribunal as well as by the Supreme Court that even the policy directions issued under section 108 of the Electricity Act, 2003 relating to fixation of tariff are not binding on the State Commission and the powers of the State Commission in the matter of determination of tariff cannot be curtailed.

6.4. With regard to the request of the Petitioner for the refund of Rs.18 crores by TNEB in view of Rs.54.11 crore over and above the average cost of supply already collected by TNEB, it may be noted that there is no rules / regulation prescribing that tariff for Railway Traction should be equal to cost of supply. Tariff can be fixed with cross subsidy and percentage of cross subsidy for Railway Traction was reduced in the impugned G.O. Since, the Petitioner category is under subsidizing category, the cross subsidy could be reduced gradually.

6.5. The Commission has fixed the two part tariff in the tariff order dated 15-03-2003. Considering the request of the Southern Railway, the GOTN fixed the single part tariff to the Southern Railway in G.O.Ms.No.95 dated 28-11-2001. The Commission fixed the two part tariff by merging the Railway Traction services with the Industrial consumers' category. The Commission took the above decision by overlooking the earlier decision of the GOTN on the grounds that there is no merit in extending the single part tariff to the Railway Traction services. Hence, it is not proper on the part of the Petitioner to state that the tariff has been fixed higher in the impugned G.O. when the benefit has been extended as requested by the Southern Railway.

6.6. The Petitioner has misled the Commission by giving wrong calculation. The tariff paid by the industrial consumer as per the impugned G.O. is higher than the tariff paid by the Petitioner category. The calculation of rate of realization of HT industrial consumer at 35% load factor for 1000 kW is as below:

Consumption per month (in units)	=	$1000 \times 0.35 \times 24 \times 30$ =252000 units
Energy charges (in rupees)	=	252000×3.20 =806400
Peak hour consumption for 6 hours (in units)	=	$1000 \times 0.35 \times 6 \times 30$ =63000 units

Peak hour charges (in rupees)	=	$63000 \times 0.64 = 40320$
Total energy charges (in rupees)	=	$806400 + 40320 = 846720$
Equivalent kVA to 1000 kW (in kVA)= $1000/0.85$	=	1176.47
Monthly demand charges payable (in rupees)	=	$1176.47 \times 300 = 352941$
Total charges payable (in rupees)	=	$846720 + 352941 = 1199661$
Average rate of realization (in Rs./ unit)	=	$1199661/252000 = 4.76$
Tariff rate payable by Railway Traction (in Rs / Unit)	=	4.60
Excess rate paid by the industrial consumer (Rs / Unit)	=	0.16

6.7. On account of determination of single part tariff in impugned G.O., the Railway Traction was exempted from levying excess over demand charges when the recorded demand is higher than the sanctioned demand. Because of waiver of above penalty, the average rate of payment was lower as compared to subsequent year's tariff payment, which is yet another concession in the fixation of single part tariff at the Petitioner's request.

6.8. While issuing subsequent tariff order on 31-07-2010, the Commission has not considered the submission of the Southern Railway to extend the single part tariff on the ground that Railway Traction services are having specific contracted demand. Hence, extension of single part tariff in G.O.Ms.No.95, itself was great benefit to the Southern Railway when they have not controlled the demand within the sanctioned demand and also not paying the excess demand charges over and above the sanctioned demand.

6.9. Even after the tariff revision, there was a revenue deficit of Rs.2302 crores for the financial year ended on 31st March 2002. The aforesaid tariff revision was essentially made only in order to partially bridge the revenue deficit of the Board. Tamil Nadu gets the power not only from the Central Power Sectors but also from

independent power projects, wind generation, co-generation and captive power plants besides its own power stations and the cost of such generations had gone more than Rs.3 per kWh during 2001-02.

6.10. The High Court of Madras on 14-06-2002 dismissed the W.P.Nos.23807 and 25210 of 2001 upholding the G.O.Ms.No.95 dated 28-11-2001. In those cases, the High Court has taken into account the absence of functional role of the Commission during the relevant period when G.O.Ms.No.95 was passed and also in the public interest for the revision of tariff upwards is done. The judgment has upheld both the aspects namely the power of the GOTN to issue the G.O. and the quantum of tariff. Particularly the High Court has observed as “we cannot ignore the public interest involved as there had been necessity to revise the tariff of electrical energy by upward revision to make the electricity supply financially viable”. In the judgment, the High Court has made it clear that future revision of power tariff shall be done only by the Commission. The expression “future power tariff revision” occurring in the judgment will indicate that the Commission can exercise future power tariff revision under the ERC Act, 1998. The judgment of the High Court not only covers the power and jurisdiction of the State Government to fix the tariff, but also impliedly cover the quantum of tariff in view of the fact that the challenge made before the High Court was not only with regard to the quantum of escalation in tariff.

6.11. G.O.Ms.No.95 dated 28-11-2001 has been upheld by the High Court and hence it cannot be said to be unenforceable. Further, as per proviso to Regulation 4 of the Tariff Regulations notified by the Commission on 21-08-2002, the existing tariff fixed shall continue until the revised tariff is fixed by the Commission. In terms of the

said tariff regulation read with the High Court's judgment, the then existing tariff fixed under G.O.Ms.No.95 dated 28-11-2001 should have to continue till such time the Commission fixes the new tariff in accordance with the provisions of the ERC Act, 1998.

6.12. Petitions seeking stay and review of the order in the G.O.No.95 dated 28-11-2001 filed before the Commission in R.P.No.1 of 2002 to 252 of 2002 were dismissed on 31-10-2002 with the following observation:-

"if this Commission seeks to review the G.O.Ms.No.95 which has been held to be valid by the Hon'ble High Court in its judgment referred to above, then, it would amount to re-writing the judgment of the Hon'ble High Court itself as rightly pointed out by the learned Addl. AG. Moreover, such a course of action could even amount to contempt of the High Court.

As rightly pointed out by the Addl. AG that the Hon'ble Division Bench of the Hon'ble High Court, Madras in the case of Shanmugaraja Spinning Mills (P) Ltd., Vs. The Superintending Engineer (i/c) Periyar Electricity System, Erode (2002 I M.L.J. 285) has held that the State Government has the power to amend the Schedule of Tamil Nadu Act 1 of 1979 which relates to the fixation of tariff and that the said power to amend the schedule to the Act is a conditional legislation".

The CMAs filed against the order of the Commission before the High Court were dismissed directing the Appellants to remit the arrears in 10 equal monthly instalments.

6.13. If the Commission now proceeds to revise the tariff for Railway Traction with retrospective effect for the period from 01-12-2001 to 15-03-2003, such an action would have the effect of superceding the tariff notification issued in G.O.Ms.No.95 dated 28-11-2001 which has already been upheld by the High Court of Madras. Further, according to the proviso to Regulation 4 of the Tamil Nadu Electricity Regulatory Commission Tariff Regulation, 2002 the tariff fixed in G.O.Ms.No.95

dated 28-11-2001 shall have to continue till the new tariff is determined by the Commission. (i.e. till the tariff notified by the Commission on 15-03-2003 vide T.P.No.1 of 2003 dated 15-03-2003) The Government have taken into account the then circumstances and arrived at the tariff for Railways in a just and equitable manner in exercise of the legislative power to determine tariff. Therefore, ends of justice require upholding of the tariff fixed by the Government in G.O.Ms.No.95 and directing the Petitioner to pay the difference in tariff with BPSC.

6.14. The order issued in G.O.Ms.No.95 dated 28-11-2001 by GOTN revising the tariff under Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979) has already been upheld by the Commission and the High Court of Madras. Further the Petitioner has been extended with a single part tariff at the request of the Petitioner as a concession which is much less than the tariff fixed to industrial category consumers. Therefore, nothing remains in the petition filed by the Petitioner and it deserves to be dismissed as devoid of merits.

7. Findings of the Commission:-

7.1. Heard the arguments of both sides.

The above M.P.No.19 of 2014 has been filed by the Southern Railway with the prayer to fix the tariff for railway traction for the period from December 2001 to March 2003 at its pre-revised tariff of Rs.150/kVA/month plus Rs.3.40/kWh plus 10 paise/unit as metro levy.

7.2. The Petitioner in the above M.P. filed W.P.No.6852 of 2002 in the Madras High Court challenging the tariff fixed in respect of the Southern Railway in

G.O.Ms.No.95, Energy, dated 28-01-2001 issued under the provisions of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act 1978 (Tamil Nadu Act of 1979). In its order dated 28-03-2013 the High Court disposed of the above Writ Petition with the following observations:-

“6. From the perusal of the entire papers, it is seen that the impugned G.O. has been issued against the Petitioner Southern Railway by enhancing the tariff rate. It is also seen that dispute period is only from 01-12-2001 to 15-03-2003. It appears that similar consumer, namely, Coimbatore Stock Exchange Limited, has challenged the tariff rate before the Hon’ble Supreme Court and the Hon’ble Supreme Court observed as follows:-

“The tariff determined for the Railways is in conformity with the demand made by it and we do not find any error in the impugned judgment whereby the High Court, rejected their grievance in the matter of fixation of tariff.”

7. Since the Tamil Nadu Electricity Regulatory Commission (the third Respondent) is now functioning which is the competent authority to decide the disputed tariff both the parties are directed to approach the third Respondent, namely, the Tamil Nadu Electricity Regulatory Commission, who, in turn, shall hear the objections from the party concerned and pass suitable orders.

8. It is represented that a sum of Rs.112 crores is due from the Petitioner. From the perusal of the entire papers and after hearing the submissions made by either side, it is clear that the disputed amount is only Rs.37 crores. Therefore, the Petitioner is directed to pay a sum of Rs.18 crores to the Respondent Board within a period of four weeks from the date of receipt of a copy of this order”.

7.3. A situation similar to that of the present M.P. arose in the year 2002 and as many as 245 Revision Petitions have been filed before this Commission by various HT consumers, on various grounds, seeking revision of HT Tariff ordered in the said G.O.Ms. No.95, Energy, dated 28-11-2001. Those Revision Petitions were also came to be filed in consequence of a number of Writ Petitions filed before the Madras High Court challenging the tariff rate fixed in the said G.O.

7.4. The Full Bench of the Commission heard those 245 Revision Petitions and made a detailed and well considered order on 31-10-2002. The Commission’s

findings on the question of competence to revise the tariff fixed in the said G.O.Ms.

No.95 is as follows:-

“As stated by the Learned Addl. AG, the Hon'ble High Court in its judgement reported in 2002 (3) CTCP1 has duly taken into account the absence of functional role of this Commission during the relevant time when the impugned G.O Ms.No.95 was issued by the Government of Tamil Nadu. The following portion of the judgement of Hon'ble High Court in paragraph 13 would be relevant. "while there had been inaction on the part of the successive Governments in not making TNERC functional by exercising the powers conferred under the Central Act, we cannot ignore the public interest involved as there had been necessity to revise the tariff of electrical energy by upward revision to make the electricity supply financially viable."

*“At paragraph 15 of the judgement in the opening sentence the Hon'ble High Court has made it clear that future revision of power tariff shall be done only by TNERC. The expression **"future power tariff revision"** occurring in the paragraph 15 of the judgement will indicate that this Commission can exercise only future power tariff revision under the ERC Act and that this Commission has nothing to interfere with the past power tariff revision already made in G.O. Ms.No.95 by the State Government in terms of section 4 of the Tamil Nadu Act 1 of 1979.*

It may be stated that as rightly contended by the Learned Addl. Advocate General during the course of his argument, the judgement of Hon'ble High Court referred to above will impliedly cover the quantum of tariff also in view of the fact that the challenge made before the Hon'ble High Court is not only in regard to the power of the State Government to fix power tariff but also in regard to the quantum of escalation as being arbitrary and unreasonable. In this connection, it may be stated that the contention of the Learned Addl. AG, that the order of the Hon'ble High Court which has already reviewed the impugned G.O.Ms.No.95, cannot be reviewed again by this Commission has got force and the Commission is in agreement with this view.

It may be further pointed out that under section 12 of ERC Act read with section 23 this Commission has been conferred with the powers of a Civil Court while discharging its functions under sections 22 and 29 of the ERC Act. According to section 12 (f) of the ERC Act, this Commission has been conferred with the powers of a Civil Court only to review its decisions, directions and orders and the said power does not extend to review the orders issued in impugned G.O.Ms.No.95 passed by the State Government. The contention put forth by Learned Senior Counsel Thiru R. Thiagarajan that by virtue of General Clauses Act, this Commission has got the power to review G.O .Ms. No. 95 is not acceptable in view of the fact that the notification fixing the tariff rates was issued only by the State Government and not by this Commission and only the State Government by virtue of the General Clauses Act, can review its orders. In this connection, the contention of the Learned Addl. AG that the validity of G.O.Ms.No.95 can be tested only with reference to the provisions of Tamil Nadu Act 1 of 1979 under which it was issued and that it cannot be tested with reference to the provisions of ERC Act has got force and it is accepted by this Commission. It may be stated that this Commission while determining tariff

under the provisions of sections 22 and 29 of ERC Act, cannot review or revise the tariff rates fixed by State Government under Tamil Nadu Act 1 of 1979 as the power to determine the tariff as conferred upon this Commission under sections 22 and 29 of ERC Act does not extend to reviewing or revising the orders passed by the State Government under a different statute. Further it may be stated that if this Commission seeks to review the G.O. Ms.No.95 which has been held to be valid by the Hon'ble High Court in its judgement referred to above, then, it would amount to re-writing the judgement of Hon'ble High Court itself as rightly pointed out by the Learned Addl. AG. Moreover, such a course of action could even amount to contempt of the Hon'ble High Court.

*As rightly pointed out by the Learned Addl. AG that the Hon'ble Division Bench of Hon'ble High Court, Madras in the case of **Shanmugaraja Spinning Mills (P) Ltd. vs. The Superintending Engineer (i/c) Periyar Electricity System, Erode (2002 I M.L.J.285)** has held that the State Government has the power to amend the schedule of Tamil Nadu Act 1 of 1979 which relates to the fixation of tariff and that the said power to amend the schedule to the Act is a conditional legislation. In view of the said decision of the Hon'ble High Court as well as the Judgement of the High Court, Madras reported in 2002 (3) CTC P1, this Commission has no power to review the G.O. Ms. No. 95 in so far as it relates to quantum of tariff.*

We are inclined to agree with the contention of the Learned Addl. AG that the Supreme Court's decision in West Bengal Commission's case is not applicable to the instant case for the following reasons namely (1) firstly in the State of West Bengal there is no Act similar to Tamil Nadu Act 1 of 1979 under which the State Government has fixed the tariff by the impugned G.O. Ms.No.95; (2) secondly in the case decided by the Hon'ble Supreme Court, the West Bengal Electricity Regulatory Commission (WBERC) was fully functional and the tariff was fixed by the WBERC under the ERC Act itself and that the Hon'ble High Court, Calcutta has denied this power of the WBERC to fix the tariff under the ERC Act whereas in the instant case, the Hon'ble High Court has held that this Commission was not made functional during the relevant time when the G.O.Ms.No.95 was issued and that the Hon'ble High Court has made it clear that "future power revision" should be made only by this Commission under the ERC Act and that the Hon'ble High Court Madras has not denied the power of this Commission to fix the tariff under the ERC Act in future and (3) thirdly in the instant case the main point at issue is whether this Commission has got the power to review an order fixing the tariff passed by the State Government under another statute whereas the point at issue in the case decided by the Hon'ble Supreme Court is different."

7.5. It is pertinent to mention here that C.M.A. Nos.2320, 2221 to 2234 of 2002 and C.M.P. Nos.16556, 16729, 16782 to 16788 of 2002 filed by some of the Revision Petitioners before the Commission were dismissed by the High Court directing them to remit the arrears in ten equal monthly instalments. Thus, the order

of the Commission dated 31-10-2002 made in R.P. No.1 to 252 of 2002 reached finality and became enforceable.

7.6. The Electricity Act, 2003 (Central Act 36 of 2003) got the assent of President of India on 26-05-2003. As per the Notification S.O.669 (E) dated 10th June 2003, published in the Gazette of India, extra, Pt. II, sec 3(ii) dated 10th June 2003, sections 1 to 120 and sections 122 to 185 of the said Act were brought into force on 10-06-2003. As such section 62 mandating the Commission to determine the tariff in accordance with the provisions of the Central Act 36 of 2003 and section 64 providing for the procedure to be followed by the Commission in the matter of Tariff Order were brought into force only on the said date, namely, 10-06-2003. The Electricity Regulatory Commission's Act 1998 (Central Act 14 of 1998) has inter-lia been repealed vide section 185 (1) of the said Electricity Act, 2003.

7.7. Thus the legal position as existed when the aforesaid Revision Petitions were filed remains the same when the present Petitioner has filed the M.P. except for the fact that 1998 Regulatory Commission's Act stands repealed and replaced by 2003 Electricity Act. As already stated the provisions for fixation of tariff and the procedure to be followed therefor in the 2003 Act were brought into force by the Government of India only on 10-06-2003. Further, the said provisions do not have retrospective effect so as to enable the Commission to revisit the tariff already fixed by the GOTN for the Southern Railway vide the above mentioned G.O. that too through a different State enactment.

7.8. Since the present M.P. is similar to the Revision Petitions already dealt with by the Full Commission wherein orders were passed on 31-10-2002, the findings rendered by the Commission in the said Revision Petitions shall apply Mutttatis-Muttandis to the case of the present Petitioner also.

7.9. In the above circumstances, the Commission finds that it does not have the power to revisit the tariff that has been fixed by the GOTN in respect of the Southern Railways since the dispute period of 01-12-2001 to 15-05-2003 is anterior to 10-06-2003 on which date sections 62 dealing with determination of tariff and section 64 dealing with procedure for tariff order of the Electricity Act, 2003 came into force.

In view of the above finding, the M.P. No.19 of 2014 is dismissed without cost.

8. 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