

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

PRESENT:

ThiruM.Chandrasekar Chairman
Dr.T.PrabhakaraRao Member
and
Thiru.K.Venkatasamy Member (Legal)

D.R.P. No.61 of 2014

M/s. Hi Tech Arai Private Limited
No.33, Sarojini Street
ChinnaChokkikulam
Madurai – 625 002.

... Petitioner
(ThiruRahul Balaji
Advocate for the Petitioner)

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
Represented by its Chairman and Managing Director
144, Anna Salai
Chennai – 600 002
2. The Chief Engineer
Non-Conventional Energy Sources
TANGEDCO
144, Anna Salai
Chennai – 600 002.
3. The Superintending Engineer
Udumalpet Electricity Distribution Circle
Udumalpet.
4. The Superintending Engineer
Tirupur Electricity Distribution Circle
Tirupur.

5. The Superintending Engineer
Dindigul Electricity Distribution Circle
Dindigul.

...Respondents
(ThiruM.Gopinathan,
Standing Counsel for Respondents)

Dates of hearing : **28-07-2014; 17-09-2019 and
01-10-2019**

Date of Order : **28-01-2020**

The D.R.P.No.61 of 2014 came up for final hearing on 01-10-2019. The Commission upon perusing the affidavit and connected records and after hearing both sides passes the following:-

ORDER

1. Prayer of the Petitioner in D.R.P. No. 61 of 2014:-

The prayer of the petitioner in D.R.P. No. 61 of 2014 is to set aside the impugned communications Lr.No.CE/NCES/EE/WPP/AEE2/F.NameChange-clarification/D.200/14, dated 16th April 2014 issued by the second respondent and the consequent Lr.No.14823/SE/UEDC/EDT/F.Hi-Tech/2014 dated 5th May 2014 issued by the third respondent and direct the respondents to effect the name change for the petitioner's windmill H.T.S.C. No.(s). 260, 261, 289 & 1570 pursuant to the application dated 27-01-2014 made by the petitioner without insisting upon payment of name transfer charges.

2. Facts of the Case:-

The petition has been filed to direct the respondents to effect the name change for the petitioner's windmill HT SC No.260, 261, 289 & 1570 pursuant to the

application dated 27-01-2014 made by the petitioner without insisting upon payment of name transfer charges.

3. Contentions of the Petitioner:-

The petitioner in his petition dated 19-06-2014 has contended as follows:-

3.1. The petitioner has commissioned the following WEG(s) and the energy generated from these is either entirely being sold to TANGEDCO by the petitioner in some cases or is being adjusted against the captive consumption of the petitioner and the surplus is being sold to the first respondent, TANGEDCO.

Location	Capacity & No. of WEGs	Make	HT SC No(s) of EDC
SF No.35/2 B (Part) of Metrathy Village, Udumalpet Taluk, Coimbatore	1 No. of 225 KW	Vestas	260 of Udumalpet EDC
SF No.35/1 B (Part) of Metrathy Village, Udumalpet Taluk, Coimbatore	1 No. of 225 KW	Vestas	261 of Udumalpet EDC
SF No.63/1 of Metrathy Village, Udumalpet Taluk, Coimbatore	1 No. of 500 KW	Vestas	289 of Udumalpet EDC
SF No.527 (P) of Kundadam Village	1 No. of 1250 KW	Suzlon	U 1570 of Udumalpet EDC
SF No.237 (Part) Muthunaickenpatty Village, Palani Taluk, Dindigul	1 No. of 600 KW	Suzlon	D 110 of Dindigul EDC
SF No.204/2,3 & 205/2A Bogampatti Village, Palladam Taluk	2 Nos. of 225 KW	Vestas	64 of Tirupur EDC
87/1 (Part) of Edayarpalayam Village, Palladam Taluk	1 No. of 225 KW	Pioneer Wincon	147 of Tirupur EDC

391/2A (Part) of Bogampatti Village, Palladam Taluk	1 No. of 225 KW	Pioneer Wincon	153 of Tirupur EDC
95/1A (Part) of Bogampatti Village, Palladam Taluk	1 No. of 500 KW	Vestas	217 of Tirupur EDC
94/1 (Part) of Bogampatti Village, Palladam Taluk	1 No. of 500 KW	Vestas	218 of Tirupur EDC
84/1 (Part) of Edayarpalayam Village, Palladam Taluk	1 No. of 500 KW	Vestas	307 of Tirupur EDC
59/1A (Part) of Edayarpalayam Village, Palladam Taluk	1 No. of 500 KW	Vestas	308 of Tirupur EDC
345/1G (Part) of Chittambalam Village, Palladam Taluk	1 No. of 500 KW	Vestas	369 of Tirupur EDC
343/1A (Part) of Chittambalam Village, Palladam Taluk	1 No. of 500 KW	Vestas	370 of Tirupur EDC
288/1B (Part) of Anupatti Village, Palladam Taluk	1 No. of 600 KW	Vestas	470 of Tirupur EDC
287/1B2 (Part) of Anupatti Village, Palladam Taluk	1 No. of 600 KW	Vestas	471 of Tirupur EDC
500/2 (Part) of V.Kallipalayam Village, Palladam Taluk	1 No. of 350 KW	Suzlon	558 of Tirupur EDC
488 (Part) of Madhapur Village, Palladam Taluk	1 No. of 350 KW	Suzlon	563 of Tirupur EDC
442/3B(Part) of Elavanthi Village, Palladam Taluk	1 No. of 600 KW	RRB	685 of Tirupur EDC
248/2, 249/3B (Part) of Elavanthi Village, Palladam Taluk	1 No. of 600 KW	RRB	686 of Tirupur EDC

81/2 (Part) of K.Ayyamapalayam Village, Palladam Taluk	1 No. of 600 KW	RRB	840 of Tirupur EDC
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3.2. The petitioner was incorporated on 23-12-1993 under the Companies Act, 1956 (No.1 of 1956) as Hi Tech Arai Limited. Thereafter, it made an application for conversion into a private company under section 31 (1) of the Companies Act, 1956 and the approval of the Central Government signified in writing have been accorded thereto by the Registrar of Companies, Tamil Nadu vide SRN A 97402721 dated 14-12-2010, the name of the said company has been changed to its present name. A fresh certificate of incorporation has been issued as a consequence of this.

3.3. The petitioner wrote letters dated January 27, 2014 informing the third respondent about the change in name and to take on record the new name of the petitioner in the records / agreements with the respondent, TANGEDCO receipt of such letters from the petitioner, the 3rd respondent had addressed a query to the 2nd respondent pertaining to the levy of name transfer fees on the petitioner vide Lr.No.SE/UEDC/UDT/DFC/AO/REV/F.Name change/D. No/14 dated 10th March, 2014. The 2nd respondent vide impugned Lr.No.CE/NCES/EEIWPP/AEE2/F.Name change-clarification/D.200/14 dated April 16, 2014 had issued a response clarifying that since the change of name was pursuant to Section 31(1) of the Companies Act, 1956, a name transfer fee of Rs.1 lakh per wind farm HT service is to be paid for effecting the name transfer. Relying upon this clarification, the 3rd respondent has issued the impugned Lr. No.14823/SE/UEDC/EDT/F. Hi-Tech/2014 dated 5th May, 2014 requesting the petitioner to pay name transfer fees.

3.4. The Commission should strike down the impugned letters issued by the 2nd and 3rd respondent for the reason that this issue has already been settled by this Commission in the case of Hinduja Foundries Ltd (DRP 5 of 2009 dated 26.8.2009). The Commission while ruling on a specific issue whether the charges for change in name of a company could be treated as a 'name transfer' has held as follows:

"6.5 The TNEB proposed to retain the same charges. The Commission, on the other hand decided to prescribe a uniform charge of rupees one lakh per service connection irrespective of the capacity of the wind mills as charges for effecting name transfer in regard to legal succession and sale of property.

6.6 We would like to observe that change of name of a company in accordance with Section 21 of the Companies Act 1956 does not amount to legal succession or sale. It prescribes the procedure for registration for name change as below:

"A company may, by special resolution and with the approval of the Central Government signified in writing, change its name:

Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company. "

6.7. It is evident that what has been proposed by the TNEB and approved by the TNERC is the charge relating to legal succession or sale of property and that the change of name under section 21 of the Companies Act, 1956 is not covered under the above category and therefore the charge of Rs. one lakh per service connection levied by the TNEB should be set aside. The charges levied by the TNEB in their impugned letters D 438/09 dated 30-01-09 and D 1568/09 dated 20-2-09 issued by C.E./NCES as if they relate to

legal succession or sale of property are set aside. Any charges paid by the petitioner will have to be refunded by the TNEB.

It is further directed that there will no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under section 21 of the Companies Act, 1956. Mere corrections have to be carried out in the existing agreements as stipulated in section 23 of the Companies Act, 1956, if the distribution licensee desires to levy a charge for mere name change, they may file a petition before the Commission.”

3.5. The petitioner submits that it is clear from the above judgment that the charges with respect to name transfer are only to be levied in case of legal succession or sale. The present case is one which is identical in so far as the principle in DRP 5 of 2009 is concerned. The name change in the present case is also clearly one which is effected under S.21 as that is the only provision under the Companies Act,1956 relating to change in name. The reference to S.31 is related to the application made, viz., pursuant to a resolution for alteration of Articles. It may be noted that the proviso to S.21 itself clearly states that name change applications do not require Central Government approval if the same relates to change of dropping or adding of the word 'Private' upon conversion. Once the name change has been effected and fresh certificate of incorporation issued reflecting such change, the petitioner is only required to notify the authorities on the basis of such statutory evidence to effect the change in name and carry out the same in its records.

3.6. The petitioner has only undergone a 'name change' which is not the same as

legal succession or transfer, as held by the Commission, the charges for a name transfer will not apply and there will be no necessity for the petitioner to enter into fresh agreements with TANGEDCO on account of the change in name under Section 21 of the Companies Act, 1956.

3.7. Taking advantage of the application, the Respondents are not making payments due in respect of the wind energy and sums in excess of Rs.2 Crores are due and payable.

4. Counter affidavit filed on behalf of the Respondents 1 to 5:-

The respondents in their affidavit dated 29-12-2014 has contended as follows:-

4.1. As per B.P. (FB) No.49, dt:07.04.2003 the Name Transfer approval of WF HT Service and Change in utility approval from "sale of wind energy to TNEB" to "wheeling and banking" vice versa was carried out at office of Chief Engineer/NCES, Chennai. From 06.12.2010 to 16.05.2014 as the Superintending Engineer/EDC's were delegated with powers, the above functions were carried out by the Superintending Engineer/Generating End EDC concerned. Now, from 17.05.2014 as per B.P. No.196, dated 17.05.2014 the above functions are being carried out at the office of Chief Engineer/NCES, Chennai.

4.2. The petitioner has applied for name transfer of their 21 Nos. WF HT services mentioned in para (3) of the petition, since the name of their Company changed from M/s.Hi Tech Arai Limited to M/s.Hi Tech Arai Private Limited. In order to carry out the Name Transfer approval, the Superintending Engineer/Udumalpet EDC vide letter dated 10.03.2014 has requested clarification, whether name Transfer fee is to

be collected from the petitioner for conversion of their Company from M/s.Hi Tech Arai Limited to M/s.Hi Tech Arai Private Limited. Since this case is not covered under the provision of the Commission's orders dt.31.08.2004 in M.P.No.41 of 2003 and orders dated .26.08.2009 in D.R.P.No.5 of 2009, the Chief Engineer/ NCES vide the letter dated 16.04.2014 has issued clarification that the Name Transfer fee is to be collected because the name of the Company is changed as per section 31 of Companies Act, 1956 due to conversion of the Company from M/s.Hi Tech Arai Limited to M/s.Hi Tech Arai Private Limited.

4.3. For effecting name transfer of Wind Farm Services, the Board has issued a BP (FB) No.49, dt07.04.2003 and fixed the slab rate of Name Transfer fees according to the capacity of WEGs to be transferred. But based on the miscellaneous petition of the Board in MP No.41 of 2003 for non-tariff related miscellaneous charges, this Commission has issued orders on 31.08.2004, and fixed a single rate for the name transfer of wind mill services".

Sl. No.	Category	Sale of Property	Legal Succession
1	Wind Mills	Rs.1 Lakh	

4.4. After issuance of the above order, in addition to the Sale of Property and Legal Succession, the all other transfers were also brought under these two categories and the name transfer fees of RS.1 Lakh per Wind Farm Service from the wind mill developers collected. In this context, it is submitted that, during 2009 the Ashok Leyland group, M/s.EnnoreFoundries Ltd has changed their Company name to M/s. Hinduja Foundries Limited under section 21 of the Companies Act 1956 and applied for WF Service name transfer to their new name M/s. Hinduja Foundries Limited. The Name Transfer approval was issued on collection of Name

Transfer fees of Rs.1 Lakh per service. But the Company has filed a petition D.R.P.No. 5 of 2009 at this Commission and argued to refund the Name Transfer fees, stating that the Name Transfer fees is not applicable, since there is no ownership change and mere name of the Company only is changed as per under section 21 of the Companies Act 1956. The Commission on 26.08.2009 has delivered the judgment for the above petition in D.R.P.No. 5 of 2009 that, as the name of the Company is changed under Section 21 of the Companies Act 1956, Name Transfer fees at Rs.1 Lakh per service are not applicable.

4.5. If any application is received for approval for mere name change of the Company as per section 21 of Companies Act, 1956, the Name Transfer fees is not collected by TANGEDCO and name transfer is effected by following the Commission's Order dated 26.08.2009. With this background the following are submitted to counter the petition.

4.6. The applications are being received for change of name of the Company for the following reasons:

- (i) Change from Proprietary Concern to Partnership firm
- (ii) Change from Partnership firm to Private Limited Company
- (iii) Change from Private Limited Company to Limited Company.
- (iv) Change from Limited Company to Private Limited Company.
- (v) Amalgamation of two companies through court order
- (vi) Change due to auction sale of the company etc.,

The following documents are to be submitted for Name Transfer, for sale of property, legal succession and name change:

Sl. No.	Particulars
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I	To ascertain existing ownership:
1	Request letter of new applicant
2	Consent letter of previous owner
3	Copy of Noted for Record approval of WEG
4	Copy of WEG commissioning Certificate
5	Copy of previous approval
6	Copy of existing agreement
II	To ascertain new ownership:
1	Documents for Sale transaction, invoice/payment receipt etc
2	Copy of land document in the name of new applicant
3	Indemnity Bond
4	Auditor Certificate for written down value of WEG
5	No Due Certificate from SE / EDC
6	Death Certificate (in case of legal succession)
7	Legal Heir Certificate (in case of legal succession)
8	Consent letters of legal heirs (in case of legal succession)
III	To ascertain name change as per Companies Act, 1956
1	Copy of old Certificate of Incorporation
2	Copy of new Certificate of Incorporation
3	MOA

4.7. The scrutinisation for checking the ownership of the WEG and process involved in issuing approval of name transfer of Wind Farm HT service is same for sale of property, legal heir and for name change.

4.8. They have not simply changed their name from M/s.Hi Tech Arai Limited to M/s.Hi Tech Arai Private Limited, by just adding 'Private' in their Company name, but they have carried out a two major works. (i) Filed an application for conversion into Private Company under section 31(1) of Companies Act, 1956. (ii) Obtained approval of Central Government in writing. It is stated that, since the change is not covered under the provision of Commission's orders dated 31.08.2004 in M.P. No.41 of 2003 and orders dated 26.08.2009 in D.R.P.No. 5 of 2009, and the Company has converted their type of Company from Limited Company to Private Limited Company as per section 31 of Companies Act, 1956, the Name Transfer fee is applicable.

4.9. As the conversion of Company from 'Private' to 'Limited' and vice versa, partnership to 'Private Limited' (or) 'Limited' is carried out only under section 31 of Companies Act, 1956 and change of new name after conversion, is not a mere name change as defined in section 21, 22, 23 of Companies Act 1956, the Commission has not extended its decision to section 31 or any other section except section 21. Hence notice has been issued to the petitioner to pay the Name Transfer fees.

4.10. The petitioner in order to gain the benefit falsely/wrongly mentions the section 21 of the Companies Act, 1956. But the new Certificate of Incorporation clearly says that, ".....upon an application made for conversion into a Private Company under section 31(1) of the Companies Act, 1956; and approval of Central Government signified in writing having been accorded thereto by the Roc-Chennai vide SRN A97402721 dated 14-12-2010 the name of the said company is this day changed to M/s. Hi Tech Arai Private Limited." Hence, it is clear that the change has not been carried out under section 21.

4.11. The procedure involving in the mere Change of Name of Company as per section 21 of Companies Act 1956 are:

1. Few suitable names are selected which indicate the main object of the Company.
2. Board meeting will be held and adopt these new name selected.
3. Application will be filed to the concerned ROC to ascertain which of the new name selected is available in Form 1A. (Rule 4A)

4. The ROC concerned will ordinarily inform within 7 days from the date of filing of Form IA.
5. On confirmation from the concerned ROC that the new name is available for adoption, a Board meeting will be held and fix up the date, time place and agenda in the Board Meeting for convening a General Meeting for passing a Special Resolution to Change the name of the Company selected.
6. Notices will be issued to all shareholders as per (Section 171).
7. The General meeting will be held and Special Resolution will be passed by three fourth majority (section 189) for change of present name to the new name availed of from the ROC.
8. The Special Resolution with Explanatory Statement will be filed in Form-23 with the concerned ROC within 30 days of passing it. (section 192).
9. Apply to the Concerned ROC in Form IB for approving the change in name (section 21).
10. On receiving the approval, apply to the concerned ROC for fresh Certificate of Incorporation in the new name. On issuance of such Certificate by the ROC, the change in name will be effected (section 23).
11. Make necessary changes in every copy of the MOA/AOA, letter head, voucher, register, office papers, records, books, documents, sign boards, common seal etc. (section 147).

4.12. The procedure involving in Conversion of a Public Limited Company into a Private Limited:-

Under section 31 of the Companies Act, 1956, any alteration made in the Articles which has the effect of converting a public company into a private company shall not have effect unless such alteration has been approved by the Central Government (powers delegated to the Registrar of Companies). The following actions are required to be taken in respect of conversion of a public Company into Private Company:-

- (i) The Board of directors of the public company shall consider the proposal of conversion at a meeting and would resolve by means of a resolution that subject to necessary approvals under section 31, if the company shall be converted into a private limited company and will include the word "Private" before the word "Limited" in its name;
- (ii) Confirm that the numbers of members are not exceeding fifty;
- (iii) Give notice in newspapers once in English and local language, where the registered office of the company is situated for conversion of company into private limited for providing opportunity to raise objections, if any, before the Registrar with a copy to the company within a period of 21 days from the date of notice and a copy of the notice be produced before the Registrar along with the application;
- (iv) Give notice to all the creditors having secured or unsecured liabilities in excess of Rs.1.00lacs by Registered post and proof of delivery of such notice is required to be produced before the Registrar along with the application;

- (v) The Board of directors will authorize calling a general meeting of members by giving notice of at least 25 days before the meeting and will also approve draft notice to be sent to the members enclosing with the Explanatory statement under section 172 of Companies Act, 1956;
- (vi) Shareholders approval by special resolution for alteration of Articles of Association for incorporation of the definition of a private company. The Articles shall be suitably amended to include the basic restrictions applicable on a Private Company and other provisions necessary thereto.
- (vii) No resolution amending the Articles, which has the effect of converting a public company into a private company, shall be effective unless it has been approved by the Central Government.
- (viii) The Board of Directors will authorize a Director / and or the Secretary to move an application to the concerned Registrar of Companies for approval after the proposal of conversion is approved at the general meeting of the shareholders by means of a special resolution.
- (ix) Certified copy of the special resolution along with Explanatory Statements and amended copy of the Memorandum and Articles shall be filed with the Registrar of Companies within 30 days of passing of the resolution in terms of section 192 in e-Form 23;
- (x) Make an application in e-Form 1B to the Registrar of Companies concerned, attaching all enclosures required with the application and also fee prescribed under Companies (Fees on Applications) Rules, 1999 as amended;

- (xi) Apply to the Registrar of Companies for providing a fresh certificate of incorporation consequent upon conversion of a public company into private company;
- (xii) Change the name in all documents of the company by inserting "Private" before the word "Limited".
- (xiii) If the reports are satisfactory, the ROC will issue a letter granting its approval for conversion of a public company into a private company. The concerned ROC then issues fresh certificates of incorporation consequent upon change of name after conversion of the company from 'Public Company' to 'Private Company'.

4.13. It is evident from the above procedure that, the word 'Private' has not been just inserted into their Company name as stated in section 21, but as per section 31 it involves conversion of one type of Company to other type of Company and involve approval of Central Government. Hence as the name of the Company M/s.Hi Tech Arai Limited has not been changed to M/s. Hi Tech Arai Private Limited just by adding the word "Private" without alteration of Articles of Association and approval of Central Government as per section 21 of the Companies Act, 1956, the name transfer fee is applicable for the process to be carried for effecting name transfer of WF HT services and hence the petitioner is liable to pay the Name Transfer fee of Rs.1 Lakh per service.

4.14. TANGEDCO is collecting Rs.1 Lakh per service only. But the point to be noted is, for the past 10 years, the cost of Material, cost of Labour, cost of Services,

cost of Commodity have increased. The salary of the staff has also increased. For the service carried out for the Name Transfer have to be compensated accordingly. As of today no service is at free of cost. Even Nationalized bank also collecting certain charges for their services. Hence carrying out a service at free of cost, for the benefit of the generators has no logical reasoning. Further the relevant point to be noted is that as on 31.12.2004, the installed capacity of wind was 1649.87 MW, the No. of WFHT service was 2274 Nos only. But today as on 30.09.2014 the installed capacity of wind is 7359.555 MW, and the No. of WF service is 9194 Nos. Further it is stated that, the applications received for change of name of the Company as per Companies Act is also increasing. Hence it is submitted that in the present financial position of TANGEDCO without a cost, a service cannot be rendered and if it is done so, it will again worsen the financial position of TANGEDCO.

4.15. The process involved in name transfer of WF services by Sale of Property, Legal Succession and change of name of the Company as per Companies Act are one and the same and the service rendered for effecting name transfer is same for all the above cases. Since the present change of the petitioner is not covered under the provision of the Commission's orders dated 31.08.2004 in M.P. No.41 of 2003 and orders dt.26.08.2009 in D.R.P.No. 5 of 2009, and the Company has converted their type of Company from Limited Company to Private Limited Company as per section 31 of Companies Act, 1956 hence the petitioner was requested to pay the name transfer fees.

5. Findings of the Commission:-

5.1. This petition has been filed to direct the respondents to effect the name change for the petitioner's wind mill H.T.S.C. No.(s). 260, 261, 289 & 1570 and to set aside the communication issued by the Chief Engineer, NCES, TANGEDCO and the letter of the Superintending Engineer, Udumalpet Electricity Distribution Circle wherein fees has been demanded to effect the name change of the company from M/s. Hi Tech Arai Limited into M/s. Hi Tech Arai Private Limited. It is the contention of the petitioner that no fees is leviable for effecting change of name of the company in the official records of TANGEDCO, since no specific order has been issued by this Commission for collection of fees for the name change in this case.

5.2. On the other hand, it is the contention of the respondents that fees is leviable for conversion of the company from M/s. Hi Tech Arai Limited to M/s. Hi Tech Arai Private Limited. The point for consideration by us is to whether fees is leviable for effecting the name change of the petitioner company in the official records of TANGEDCO. It is seen that the petitioner has already got approval of the Registrar of Companies, Tamil Nadu vide SRN A 97402721 dated 14-12-2010 to change the petitioner company as M/s. Hi Tech Arai Private Limited. Consequent on this, a fresh Certificate of Incorporation has been issued by the Registrar of Companies. During the course of argument, the learned counsel for the petitioner has pointed out that consequent on the change of the status of the company as Private, neither the liability of the company nor the shareholding pattern of the company got changed. It is only a formal change made in accordance with the law for which no fee is payable as per the orders of the Commission in force.

5.3. In this connection, we would like to say that fees for effecting name change has been specified by the Commission in M.P. No.41 of 2003 which relates to order on non-tariff miscellaneous charges. It is seen that in the said order in respect of wind mills for change of name, a fee of Rs.1,00,000/- has been prescribed and the said fee is applicable if the change of name is consequent on sale of the wind mill or due to legal succession.

5.4. In this case, the change in name is not due to sale of the wind mills or due to legal succession. As such, the orders issued by the Commission in M.P. No.41 of 2003 does not contemplate levy of any fees for effecting name change in the instant case.

5.5. The Commission has also in a previous occasion in the case of M/s.Hinduja Foundries Ltd in DRP 5 of 2009 held that no fee is leviable in case the name change is not due to legal succession or sale of the wind mills. The following extract of the Commission in the above case is relevant:-

“6.1. Non tariff related miscellaneous charges such as service connection charges, meter rent and meter related charges, meter caution deposit, reconnection charges, charges for replacement of meter card, service charge for dishonoured cheque, charges for name transfer, development charges, registration charges, earnest money deposit, current consumption deposit and erection charges were determined by the Commission on 31-8-2004 in exercise of the powers conferred under Sections 45, 46, 47 and 50 of the Electricity Act 2003. The charges were brought into force with effect from 1-10-2004. These charges were finalized with reference to petition No.M.P.41 of 2003 filed by the Tamil Nadu Electricity Board

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6.6 We would like to observe that change of name of a company in accordance with Section 21 of the Companies Act 1956 does not amount to legal succession or sale. It prescribes the procedure for registration for name change as below:

*“A company may, by special resolution and with the approval of the Central Government signified in writing, change its name:
Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word “Private”, consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.”*

x xxxxx

7. Conclusion :

The charges levied by the TNEB in their impugned letters D 438/09 dated 30-1-09 and D 1568/09 dated 20-2-09 issued by C.E./NCES as if they relate to legal succession or sale of property are set aside. Any charges paid by the Petitioner will have to be refunded by the TNEB. It is further directed that there will be no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under Section 21 of the Companies Act 1956. Mere corrections have to be carried out in the existing agreements as stipulated in Section 23 of the Companies Act 1956. If the distribution licensee desires to levy a charge for mere name change, they may file a petition before the Commission.”

5.7. The argument of the respondent that for effecting name change in the records of the respondents involves too many procedural issues warranting levy of fees cannot be accepted in the absence of specific provision in the order issued by the Commission in M.P. No.41 of 2003 dated 31-08-2004 which was in force when the application was made by the petitioner. In the latest order issued by the Commission in M.P.No.7 of 2018, a fee of Rs.7500/- has been specifically provided for effecting name change in the cases not covered by sale of property or legal succession. However, since the said orders came into force with effect from 05-10-2019 only, it cannot be applied to this case.

5.7. In view of the above, during the relevant period when the application was made by the petitioner to effect name change in the records of the respondents, no fee is leviable as per the orders then in force. In the circumstances, the petition is

allowed and consequently the letters issued by the second respondent in Lr.No.CE/NCES/EE/WPP/AEE2/F.Name Change-clarification/D.200/14, dated 16th April 2014 and demand of fees raised by the third respondent in Lr.No.14823/SE/UEDC/EDT/F.Hi-Tech/2014 dated 5th May 2014 are setaside.

With the above orders, this D.R.P. is finally disposed of.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.PrabhakaraRao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission