

**Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 167 of 2009**

**Dated: 26<sup>th</sup> April, 2010**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. H.L. Bajaj, Technical Member**

**In the matter of:**

**Tamil Nadu Newsprint and Papers Limited  
No. 67, Mount Road  
Guindy,  
Chennai-600 032**

**... Appellant**

**Versus**

**Tamil Nadu Electricity Regulatory Commission  
No. 19A, Rukmini Lakshmi pathy Salai  
Egmore  
Chennai-600 008**

**... Respondent**

**Counsel for the Appellant(s)      Mr. V.M. Shiva Kumar**

**Counsel for the Respondent(s)      Mr. G. Umapathy for TNERC**

**JUDGMENT**

**Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**

**1. Tamil Nadu Newsprint and Papers Limited is the  
Appellant herein.**

**2. As against the order dated 10.06.2009 passed by the Tamil Nadu Electricity Regulatory Commission, this Appeal has been filed by the Appellant.**

**3. The necessary facts of the case are as follows:**

**4. The Appellant was promoted by the Government of Tamil Nadu in 1979 for manufacture of newsprint and printing and writing paper using bagasse as primary raw material. This is ecologically friendly and it saves substantial forest cover and lakhs of trees from being axed. The Appellant is also operating a captive co-generation plant. After meeting their in-house requirement, surplus power is supplied to the TNEB Grid.**

**5. As the Appellant requires large quantity of bagasse, the Appellant entered into a long-term tie-up arrangement with the sugar mills. The TNEB fixed the purchase price for the**

**power generated from the co-generation plant. During 2004-05 the rates were Rs. 3.15 per unit for bagasse as fuel and Rs. 3.01 per unit for power generated using bagasse substituted with fossil fuel. Thus there is a difference of 14 paise only between the bagasse based cogeneration and fossil fuel captive co-generation.**

**6. The State Commission in suo moto proceedings passed an order on 15.05.2006 fixing the tariff for 2 categories. In the said order, the State Commission had designated sugar mills using fossil fuel not exceeding 25% as non-conventional energy sources based co-generation plants. Those using fossil fuel beyond 25% were classified as fossil fuel based co-generation plants.**

**7. The State Commission also held that sugar mills commissioned under the orders of the TNEB can continue to operate with existing agreement i.e. Rs. 3.15 per unit during**

**crushing season and Rs. 3.01 per unit during non-crushing season. As against this order, the Appellant had filed Appeal and ultimately the Appellate Tribunal for Electricity (APTEL) dismissed the Appeal and held that the TNEB could continue with the existing agreement till the end of the agreement period.**

**8. During May 2009 the Respondent Commission had circulated a draft amending order relating to power purchase and allied issues in respect of fossil fuel based group captive generating plants and fossil fuel based co-generation plants. The Appellant gave the detailed representation to increase the floor rate and ceiling rate of captive power generation so as to narrow down the difference between the two categories. The State Commission thereafter passed orders on 10.06.2009 holding that the floor rate and the upper limit have been decided based on the prevailing grid frequency in the southern grid and generation cost of fossil fuel based captive generation**

**plant/co-generation plants in Tamil Nadu. However, the State Commission partially accepted the representation in respect of the Plant Load Factor up to 55%. Again another representation had been sent to State Commission to increase the floor rate and the upper ceiling rate but the State Commission has not given such relief as claimed by the Appellant. Hence this Appeal.**

**9. The Learned Counsel for the Appellant has raised the following grounds:**

- (i) The floor rate and the ceiling rate being followed in the neighbouring States have not been followed in Tamil Nadu State.**
- (ii) The fossil fuel is not available under Administered Price Mechanism to the Captive Power Plants/Captive Co-generation Power Plants.**
- (iii) The Government's policy is to protect the environment and to encourage harnessing the surplus**

**captive power to mitigate the gap between the demand and availability of power supply. Such an encouragement has not been given to the Appellant which is contrary to the policy of equality.**

- (iv) The State Commission failed to consider sugar mills having tie-up with the Appellant as a sub-set of sugar mill cogeneration. Equating those sugar mills with other captive co-generation plants is totally arbitrary and grossly discriminatory.**

**10. The Learned Counsel for the State Commission, in justification of the impugned order submitted that the Appellant has no locus standi to file the Appeal especially when the impugned order is only a modification of the earlier order passed on 15.05.2006 which was confirmed by this Tribunal and as such it had attained finality and as such the Appellant cannot be allowed to reopen the matter now.**

**11. We have considered the submissions made by the Learned Counsel for the parties.**

**12. The main question that arises for consideration is whether the Appellant would be entitled for upward revision of floor rates especially when the captive generation units are not eligible for supply of coal or lignite or gas supply under the Administrative Price Mechanism. It is mainly contended by the Appellant that the floor rate and the maximum ceiling rate fixed in the neighbouring States which form part of the southern grid have not been considered while rejecting the Appellant's representation dated 04.06.2009.**

**13. As pointed out by the Learned Counsel for the State Commission, the impugned order is an amending order to the order dated 15.05.2006 which has attained finality after the Appeal against the said order was dismissed by the**

**Tribunal. The perusal of the impugned order clearly reveals that the floor rate of Rs. 2.10 per unit and the maximum ceiling rate of Rs. 4.08 per unit are linked with the Central Commission's UI rate proposed and the same would help both the CGPs/Co-generation plants and distribution licensee in the long run. It is also revealed from the order that the State Commission would be monitoring the commercial mechanism and revisit the rate after implementing intra-State ABT in Tamil Nadu. Further the charges worked out for the frequency range is subject to change as and when CERC revises the same.**

**14. As referred to above, the floor rate and the upper ceiling rate are based on the prevailing grid frequency in the southern grid and generation cost of fossil fuel based CGPs/Co-generation power plants in Tamil Nadu. The State Commission while arriving at this rate has taken into consideration the interest of the captive generation plants as**

**well as the co-generation plants and the distribution licensee. Further, the State Commission did not blindly accept the pricing of CERC but proceeded to record the reasons in support of its order.**

**15. As such, there is no discrimination, as alleged, against the sugar mills having tie-up with the Appellant. The State Commission is duty bound to fix the tariff based on the principles laid down under section 62 of the Electricity Act and the mere fact that such tariff affects a particular section cannot be a ground for seeking to set aside the impugned order.**

**16. As a matter of fact, the Appellant, in the representation sent to the Commission did not actually mention about renegotiation of the existing arrangements. The draft amendment was published in the website and the representations furnished by the Appellant were considered**

**and in fact partially accepted in the impugned order, thereby the State Commission after considering the suggestions of the Appellant increased the ceiling rate at Rs. 4.08 per unit as against the existing rate of Rs. 3.45 per unit.**

**17. Admittedly, the agreement is valid for 3 years from 17.10.2006 and the same can be extended for a further period based on the mutual agreement between the Board and the CGP holder in accordance with clause 8(a) of the agreement. So, under those circumstances it is not open to the Appellant to contend that the impugned order is arbitrary.**

**18. As stated above, in the representation filed by the Appellant there is no whisper about the floor rate of Rs. 2.10. The Appellant has mentioned only about order No. 3 dated 15.05.2006 and the sugar mills with whom the Appellant has a tie-up arrangement. As pointed out earlier,**

**the said order No. 3 dated 15.05.2006 was challenged by the Appellant before this Tribunal and the same had been dismissed. Therefore, the Appellant cannot now question the order No. 3 which became final and binding upon the parties.**

**19. In the above circumstances there is no merit in the Appeal and accordingly the Appeal is dismissed. No costs.**

**( H.L. BAJAJ )  
TECHNICAL MEMBER**

**(JUSTICE M. KARPAGA VINAYAGAM )  
CHAIRPERSON**

**DATED: 26<sup>TH</sup> APRIL, 2010,**

**INDEX: REPORTABLE/NON-REPORTABLE**