

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)  
(Circuit Bench Chennai)**

**Appeal No. 51 and 56 of 2012**

**Dated: 12<sup>th</sup>December, 2012**

**Present: Hon'ble Mr. Justice M. KarpagaVinayagam, Chairperson  
Hon'ble Mr. RakeshNath, Technical Member**

**In the matter of:**

**Appeal No. 51 of 2012**

**Indian Wind Power Association  
Door No. E, 6<sup>th</sup> Floor  
Tower I, Shakthi Towers  
No. 766, Anna Salai  
Chennai – 600 0 02**

**...Appellant (s)**

**Vs**

**1. Tamil Nadu Electricity Regulatory  
Commission  
No. 19-A, RukmaniLakshmipathySalai  
Marshalls Road, Egmore  
Chennai – 600 008**

**...Respondent(s)**

**2. Tamil Nadu Electricity Board  
144, Anna Salai  
Chennai – 600 002**

**Counsel for the Appellant (s) :** Mr. Rahul Balaji  
Mr. T. Srinivasa Murthy  
Ms. PankhuuriBhardwaj  
Mr. Raguraman

**Counsel for the Respondents (s):** Mr. S. Guru Krishna Kumar, AAG  
for State of Tamil Nadu  
Mr. S. Vallinayagam  
Mr. L. Plato Aristatil

**Appeal No. 56 of 2012**

**The Southern India Mills Association** ....Appellant (s)  
No. 41, Race Course Road  
Coimbatore – 641 018

**Vs**

**1. Tamil Nadu Electricity Board**  
No. 144, Anna Salai  
Chennai – 600 002

**2. Tamil Nadu Electricity Regulatory** ...Respondent(s)  
**Commission**  
TIDCO Office Building  
No. 19-A, RukmaniLakshmipathySalai  
Marshalls Road, Egmore  
Chennai – 600 008

**Counsel for the Appellant (s) :** Mr. N.L. Rajah, Sr. Counsel  
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for State of Tamil Nadu  
Mr. S. Vallinayagam  
Mr. L. Plato Aristatil**

**JUDGMENT**

**MR. RAKESH NATH, TECHNICAL MEMBER**

These Appeals have been filed by M/s. Indian Wind Power Association and the Southern India Mills' Association as against the impugned order dated 28.12.2011 passed by the Tamil Nadu Electricity Regulatory Commission ("State Commission") on the petitions filed by the Appellants relating to the clarificatory letter dated 25.6.2010 issued by the Chief Financial Controller, Tamil Nadu Electricity Board, regarding fixation of energy and demand quota of the Appellants during the period of restrictions and control measures in power supply due to power shortage in the State.

2. M/s. Indian Wind Power Association, the Appellant in Appeal no. 51 of 2012 is an association of wind energy generators.
3. M/s. Southern India Mills' Association, the Appellant in Appeal no. 56 of 2012 is an Association of consumers. The members of these associations have invested in putting up wind energy generators for captive use.
4. The State Commission and the Tamil Nadu Electricity Board ('Electricity Board') are the Respondents.
5. The brief facts of the case are as under:
  - 5.1 The Electricity Board, the Respondent approached the State Commission for imposition of restrictions and control measures in view of the power shortage in the State. Consequently, the State Commission passed an order on 28.11.2008 approving the restrictions and control measures with effect from 1.11.2008 and specifying energy and

demand quotas for HT consumers. The order also provided for levy of excess demand charges and excess energy charges at thrice the normal rate on HT consumers for exceeding their demand and energy quota respectively. The State Commission also directed that the method of determination of demand and energy quota for wind energy captive users will be the same as that of other captive users. The State Commission also permitted utilization of the wind energy banked with the Electricity Board in five equal instalments between 1.12.2008 and 30.4.2009 wherever necessary by enhancing the demand and energy quota as done in the case of other captive consumers subject to evening peak restrictions. The order also recognized the method for fixation of demand and energy quota for captive users as outlined by the Electricity Board in their memo dated 17.11.2008.

5.2 Thereafter, the State Commission in a Suo Motu Proceeding no. 1 of 2009 passed an order on 28.10.2009 giving detailed directions for energy and demand quota for captive users

including wind energy captive users for the period from 1.11.2008 to 31.10.2009 and for future with effective from 1.11.2009 to 31.3.2010. However, the directions for the period from 1.11.2009 to 31.3.2010 issued by the State Commission in SMP 1 of 2009 continued upto 7.9.2010 until the order of the State Commission in MP 6 of 2010 was delivered dispensing with the need for advance declaration mechanism for captive and third party sources.

5.3 In accordance with order in SMP 1 of 2009, the HT consumers made declaration in respect of captive power plant/wind generation every month in advance and based on that, the Electricity Board issued quota every month.

5.4 The Chief Financial Controller of the Electricity Board by letter dated 25.6.2010 issued a clarification regarding fixation of quota based on State Commission's order in SMP no. 1 to the effect that in Electricity Board's memo dated 17.11.2008 "actual energy supplied" was meant to be "actual energy adjusted" and in case of wind energy, the

energy supplied during a month will be adjusted against consumption. Further, the excess supplied energy will be sent for banking which will be drawn for adjustment at the time of off-season of wind and at that time the equivalent demand will be calculated and added to quota. Therefore, the deemed demand will also be allowed only based on the units adjusted and not based on energy injected into the grid.

5.5 Aggrieved by the clarificatory letter dated 25.6.2010 issued by the Chief Financial Controller of the Electricity Board, the Appellants filed a petition before State Commission praying that the Board may be punished for non-compliance of the directions of the State Commission in its order dated 28.11.2008 in petition no. 42 of 2008 and its order dated 28.10.2009 in SMP no. 1 of 2009 and praying for setting aside the clarificatory letter dated 25.6.2010 as being illegal.

5.6 In the meantime, the State Commission on 7.9.2010 modified its earlier orders and permitted all the HT consumers having captive generation and power purchase from third party sources as well to get additional demand and energy quota over and above the demand and energy quota from the Electricity Board's sources subject to the sanctioned demand. The State Commission also stated in the order that the consumers need not give any advance declaration for procurement of captive power as stipulated in order in SMP no.1 of 2009 or procurement of power from third party. However, such additional generation or procurement would be up to the sanctioned demand.

5.7 The State Commission passed the impugned order dated 28.12.2011 holding that the Chief Financial Controller of the Electricity Board usurped the authority of the State Commission in clarifying the matter arising from previous orders of the Commission and was deserved to be proceeded with under Section 142 of the Act. However, the State

Commission decided that both the base period consumption as well as the 17.11.2008 formula should be on consumption basis while confirming that the equivalent demand should be based on the consumption of wind energy by the captive consumer instead of actual wind energy injected into the grid, in line with the clarification given by the Chief Financial Controller of the Electricity Board.

6. The main issues raised in these Appeals are these (1) whether the clarification letter issued by the Electricity Board dated 25.6.2010 that the equivalent demand is to be based on the energy consumed/adjusted from captive wind energy generator in respect of captive user instead of actual energy injected into the grid by the wind energy generator is correct? (2) If so, should it be made effective from the date of clarificatory letter dated 25.6.2010 when the State Commission has held that the Electricity Board usurped the authority of the State Commission and deserved to be proceeded with under Section 142 of the Act?

7. According to the Appellants, if actual energy consumption is to be adopted, the date of the impugned order i.e. 28.12.2011 should be the effective date of the revised formulation. According to the Respondent Electricity Board the State Commission has correctly made it effective from 25.6.2010, i.e. the date of clarificatory letter issued by the Chief Financial Controller of the Board.
8. Since the issues and the impugned order are the same in both these Appeals, this common judgment is being rendered.
9. Ld. Counsel for the Appellants have made the following submission to assail the impugned order.
  - i) In accordance with the directions issued by the State Commission in its order dated 28.10.2009 in SMP no. 1 of 2009, the HT consumers declared generation in respect of CPP/wind every month in advance and based

on that, Electricity Board/TANGEDCO (successor of the Board) issued quota every month applying its memo dated 17.11.2008. Till 25.6.2010 when the Chief Financial Controller of the Board issued the clarification, the Board/TANGEDCO based on the declaration of energy by the HT consumer, calculated the equivalent demand and issued quota. Only through memo dated 25.6.2010 the Electricity Board/TANGEDCO revised their stand and started calculating equivalent demand based on the consumption of energy.

ii) The State Commission in its order dated 28.10.2009 in SMP no. 1 of 2009 had clearly directed that the equivalent demand should be based on energy declared by the consumer which would roughly be the monthly average generation.

iii) The instructions dated 17.11.2008 and orders in SMP no. 1 of 2009 did not contemplate any consumption based calculation of demand. Though the State

Commission in its order dated 7.9.2010 in MP no. 6 of 2010 has removed the advance declaration mechanism of calculation, the proposition of memo dated 17.11.2008 along with State Commission's order dated 28.10.2009 continued. Therefore, the "actual energy supplied" cannot be equated or treated as the energy adjusted or consumed by the consumer at any point of time.

iv) The Electricity Board/TANGEDCO has failed to consider the distinction between "Equivalent demand" and "Deemed demand". The present case relates to equivalent demand and not deemed demand. The equivalent demand is calculated based on the energy generated by wind generator. On the other hand, the deemed demand is based on energy utilized for captive consumption.

v) it is incorrect to say that the energy after adjustment would go back to banking that would fetch equivalent demand when it is redrawn. The banked energy would

not fetch any equivalent demand at any point of time and would only be encashed as unutilized wind energy at the end of the wind period i.e. on 31<sup>st</sup> March of every year.

vi) If the energy consumption was the basis for calculating equivalent demand then there was no need for advance declaration of energy generation till orders were passed by the State Commission on 7.09.2010 dispensing with the advance declaration.

vii) The industries are experiencing heavy load shedding at various timings in violation of the scheduled power cuts preventing the consumers from utilizing their own captive plant's energy.

viii) The State Commission in the impugned order dated 28.12.2011 has held that the Chief Financial Controller, Electricity Board usurped the authority of the State Commission while issuing the letter dated 25.6.2010 by clarifying the matter arising from previous orders of the

State Commission and has directed to proceed against the officer under Section 142 of the Act. If that be so, it could not be justified in making the order applicable retrospectively i.e. from 25.6.2010.

ix) The State Commission in its orders in DRP no. 13 of 2010 dated 14.3.2011 and 14 of 2010 dated 14.3.2011 has held that the Electricity Board is estopped from changing the demand and energy quota subsequently, after the same has been intimated to the consumer and the consumer has abided by the same.

10. Shri S. Guru Krishna Kumar, Ld. AAG of the State of Tamil Nadu representing the Electricity Board made the following reply submissions:

i) The methodology adopted in case of wind energy generators indicates that the unutilized energy for the wind energy generators is available for redrawal. Accordingly, if the quota is given for the entire energy injected into the system by the wind energy generator,

redrawal from the banked energy would not be eligible for a quota fixation, since allowing it at two different times would amount to providing double benefit for the same energy.

ii) During off-season, the generated energy may not be adequate and therefore the captive consumer can draw from the bank and consume. Even during season if the generated energy is not adequate, the captive consumer can draw from the bank. Therefore, consumption has to be the basis for determination of the equivalent demand met from wind energy generator.

iii) As per Electricity Board's memo dated 17.11.2008 since monthly base energy consumption is measured against consumption, the energy supplied by the captive generator should also be measured against consumption.

iv) The equivalent demand in other words is the demand supplied by the generator which had been arrived for the

units of captive power consumed by a captive consumer from the date of implementation of order no. 3 dated 15.5.2006 and order no.2 dated 15.5.2006 i.e. even before the implementation of restriction and control measures with effect from 1.11.2008. The clarification issued by the Electricity Board to the doubt raised by the Appellants was only a reiteration of what was being followed from the year 2006.

11. From the above submissions of the parties, the following question would arise for our consideration:

- i) Whether the clarification letter dated 25.6.2010 issued by the Chief Financial Controller of the Electricity Board and upheld by the State Commission by the impugned order regarding equivalent demand to be based on the energy consumed/adjusted from captive wind energy generator instead of actual energy injected into the grid is correct?

ii) If so, whether the State Commission was correct in making it applicable from the date of clarificatory letter dated 25.6.2010 especially when the State Commission has held that the Board has usurped the authority of the State Commission while issuing such letter and deserves to be proceeded with under Section 142 of the Electricity Act, 2003?

12. Since both these issues are interrelated, we shall now deal with them together.

13. Let us first examine the impugned order dated 28.12.2011 passed in MP nos. 32 and 41 of 2010 filed by the Appellants.

*“From the above, it could be observed that while the Petitioners are relying on their own declaration for the purpose of fixing demand and energy quota and the consequent levy of excess demand / energy charges, the licensee viz. TNEB / TANGEDCO is relying on energy adjusted for the purpose of levy of excess demand / energy charges. While in the case of other captive power stations if the generator injects excess energy, the excess energy is deemed to have been lapsed, in the case of Wind Energy Generators, in view of the provisions in the Tariff Order for Wind Energy, the excess energy injected into the system can*

*be retained as banked energy and is allowed to be redrawn from the bank whenever required. The procedure adopted is as follows:-*

- (a) The entire energy injected into the system is measured at the generating end and informed to the circle at the consumption end.*
- (b) The actual consumption is measured at the consumption end.*
- (c) The unutilized energy is then reported back to the generating end for keeping it in the bank.*
- (d) The generated energy in a month along with the banked energy is at the disposal of the consumer for drawal subsequently as per the applicable orders.*

*14.10 The examination of the methodology adopted in case of wind energy generators indicate that unutilized energy from wind energy generators is available for redrawing. Accordingly, if the quota is given for the entire energy injected into the system by the wind energy generators, redrawing from the banked energy would not be eligible for quota fixation. This is also supported by the fact that the thermal captive generators, if they inject excess energy than the consumed energy, are not eligible for banking and therefore the excess energy lapses in the same month. Since in the case of wind energy generators redrawn energy from the bank is being allowed for quota fixation it is appropriate that the energy consumed in that month alone should be eligible for quota fixation. Alternatively, if the entire energy injected is considered for the purpose of quota fixation, the energy redrawn from the banked units should not be eligible for quota fixation since allowing it at two different times would amount to providing*

*double benefit for the same energy. Para 16 (11) of the order of the Commission in suo motu proceedings No.1 of 2009 issued on 28-10-2009 is extracted below:-*

*“16(11)- Unutilised banked energy available as on 1-11-2009 may be utilized by the wind captive users in five equal monthly instalments from 1-11-2009 upto 31-3-2010 in addition to current generation of that month”*

14.11. *The energy proposed for captive users has been mentioned in the order of the Commission. There could be various scenarios. During off season, the generated energy may not be adequate and therefore the captive consumer could draw from the bank and consume. Even during the season if the generated energy is not adequate, the captive consumer could draw from the bank. Therefore, consumption has to be the basis for determining the quota. To this extent, the clarification could be deemed to modify the circular of TNEB dated 17-11-2008. The memo of 17-11-2008 stipulated monthly base energy consumption as (A). The energy supplied by the captive generator is termed as (B). Since A is measured against consumption, (B) also should be measured against consumption. The Commission, therefore, decides that the impugned clarification dated 25-6-2010 issued by TANGEDCO is in order. It is but fair that the clarification should have effect from 25-6-2010. In this approach, the orders of the Commission as contained in Tariff Order for wind energy in Order No. 1 of 2009 dated 20-3-2009 and various orders issued for Restriction and Control measures have to be harmoniously constructed and implemented.*

14.12 *The TNEB has usurped the authority of the Commission in clarifying a matter arising from*

*previous orders of the Commission. The CFC Revenue deserves to be proceeded under Section 142 of the Electricity Act for issuing the clarification in circular dated 25-6-2010. A show cause notice may be issued to him.*

*14.13 We would also like to clarify that the treatment of banked units as discussed above is only for the purpose of quota fixation and does not alter the method of encashment of unutilized banked units as provided for in the Tariff Order for Wind Energy.”*

14. The findings of the State Commission are summarized as under:

- i) In case of wind energy generators, the excess energy injected into the system is retained as banked energy and is allowed to be redrawn from the bank whenever required along with the energy generated in a month.
- ii) If a thermal captive generator injects excess energy than the energy consumed by the captive user, it is not eligible for banking and the excess energy lapses in the same month. Since in the case of wind energy generators the redrawal of energy from the bank is

allowed for quota fixation, it is appropriate that the energy consumed in that month should only be eligible for quota fixation.

iii) If the quota is fixed on the entire energy injected into the grid by the wind energy generator, redrawing from the banked energy should not be eligible for quota fixation since allowing its benefit at two different times would amount to providing double benefit for the same energy.

iv) In the State Commission's order dated 28.10.2009 energy proposed for captive users had been mentioned. During off season the generated energy may not be adequate and, therefore, the captive consumers could draw from the bank. Even during season, if the generated energy is not adequate, the captive consumer could draw from bank. Therefore, consumption has to be the basis for determining the quota.

- v) In memo dated 17.11.2008 of the Electricity Board regarding fixation of quota for consumers having captive power plant, since monthly base energy consumption is measured against consumption, the energy supplied by the captive generator should also be measured against consumption.
- vi) The Tariff Order for wind energy generators dated 20.3.2009 and the various orders issued for Restriction and Control Measures by the State Commission have to be harmoniously constructed and implemented.
- vii) The clarification dated 25.6.2010 issued by TANGEDCO is in order. But to be fair it should have effect from 25.6.2010.
- viii) The Electricity Board by clarifying a matter arising from orders of the Commission through its clarificatory letter dated 25.6.2010 has usurped the authority of the

Commission and so it deserves to be proceeded with under Section 142 of the Electricity Act, 2003.

15. The above findings would show that the State Commission having decided to issue notice under Section 142 of the Act to the concerned officer of the Electricity Board for issuing clarificatory letter dated 25.6.2010, has ultimately held that the clarification letter was in order.
16. Let us now examine the memo dated 17.11.2008 issued by the Electricity Board regarding fixation of quota for consumers getting part of supply from captive power plants during the period of restrictions and control. The memo specifies that the demand energy quota for HT consumers partially using power from captive power plant will be fixed as under:-

**“Fixing of Energy quota:-**

- |      |  |   |   |
|------|--|---|---|
| (i)  | <i>Monthly base energy consumption as</i>        | } |   |
|      | <i>illustrated in working instructions dated</i> | } | A |
|      | <i>1.11.2008</i>                                 |   |   |
| (ii) | <i>In that the actual energy supplied</i>        | } |   |

- |       |   |   |         |
|-------|---|---|---------|
|       | (monthly average) for the above three months average by the CPP | } |         |
|       |   | } | B       |
|       |   | } |         |
| (iii) | The actual energy availed by consumer from TNEB                 | } |         |
|       |   | } | A - B=C |
| (iv)  | 60% energy on C (Cx60/ 100)                                     | = | D       |
| (v)   | The quota fixed for energy                                      | = | B+D     |

**Fixing of Demand quota:-**

- |      |  |   |   |
|------|--|---|---|
| (i)  | The base demand consumption as illustrated in working instructions dated 1.11.2008 | } | E |
|      |  | } |   |
| (ii) | In that the calculated demand supplied for the Energy for the month by CPP         | } | F |
|      |  | } |   |

$$F = \frac{\text{Energy supplied by CPP in a month}}{\text{No. of days in the month} \times 24 \text{ hours} \times \text{P.F. } 0.95}$$

- |       |   |   |         |
|-------|---|---|---------|
| (iii) | The actual demand availed by consumer From TNEB | } | E - F=G |
|       |   | } |         |
| (iv)  | 60% demand of G (Gx60/ 100)                     | = | H       |
| (v)   | The demand quota fixed                          | = | F+H     |

(Calculation of demand supplied by generator may be worked out on par with calculation made for wheeling of power to the captive consumers as communicated in CE/PPP memo. Dated 6.11.2007 and subsequent amendment thereof).

*The Superintending Engineers/Electricity Distribution Circle should get a letter from the CPP for each HT service connection they intend to supply power before fixing quota.*

*The SEs of the circle where the generator unit is available will arrange to take a check reading on every Saturday slot wise and the details of energy actually sent out and shared by various industries who have wheeled energy from the generator should be communicated to the SEs concerned where the HT service are available by every Monday. The SE of the circle where the HT Service are available by every Monday. The SE of the circle where the HT Service availing the wheeled energy, is situated will check the actual consumption with respect to the total quota fixed and take appropriate action.*

*At the time of every weekly check/monthly reading the concerned SEs should closely watch the demand and energy used by the consumer and compared it with the deemed demand and energy supplied by the generators. If there is any violation of the demand quota and energy as determined above, then the excess demand charges may be collected for the excess energy used from TNEB Grid at the rate to be specified by TNERC.”*

17. The instructions dated 1.11.2008 mentioned in the above order dated 17.11.2008 stipulate that the base energy consumption for HT consumers will be the average consumption of any three consecutive months advantageous to the consumers between the billing period from October, 2007 to September, 2008, when there were

no power cuts. The base demand will be the highest demand registered in any month during the period October, 2007 to September, 2008.

18. The order dated 17.11.2008 was meant for HT consumers partially using power from Captive Power Plant (CPP). The monthly base energy indicated in the above order as 'A' is the actual average energy consumption of the consumer. 'B' also pertains to the energy actually supplied by the CPP to the consumer. In fixing of demand quota of the consumer, 'E' is the recorded base demand of the consumer. 'F' is the calculated demand supplied by the CPP to the consumer. Since all the values in the formulation given in the order dated 17.11.2008 are relating to consumption of the captive consumer, the energy supplied by the CPP for calculating 'F' should also be the supply by the CPP to the captive user or consumption and not energy injected by the CPP into the grid.

19. The note to the memo dated 17.11.2008 stipulates that the distribution licensee at the time of monthly reading of the consumer will compare the demand and energy used by the consumer and compare it with the deemed demand and energy supplied by the generators and if there is any violation of the demand and energy quota then excess demand and excess energy charges will be collected. Thus, while computing the excess energy and excess demand charges, the actual demand and energy consumed by the captive consumer at the end of the month has to be compared with the actual energy and deemed demand supplied by the captive generator. Even according to the Ld. Counsel for the Appellants, the deemed demand has to be calculated with respect to the energy from captive wind energy generator actually consumed by the consumer. Thus the excess demand and energy charges are to be calculated after accounting for deemed demand and actual energy supplied by the captive generator to the consumer.

20. The State Commission by order dated 28.11.2008 regarding approval of the restriction and control measures and levy of excess demand charges and energy charges decided that the method for determination of demand and energy quota for wind energy captive users shall be the same as that of other captive users i.e. as per memo dated 17.11.2008. The State Commission also permitted utilization of banked energy between 1.12.2008 to 30.4.2009 in five monthly equal instalments by enhancing the demand and energy quota.

21. The State Commission in a Suo Motu Proceeding no.1 of 2009 passed an order on 28.10.2009 relating to the demand and energy quota for wind energy captive users and decided as under:-

A) For the period 1.11.2008 to 30.4.2009

i) The base energy consumption and base demand shall be computed for all captive users including wind energy

captive users on the basis of formula contained in the Electricity Board's memo dated 1.11.2008.

ii) The demand and energy quota for wind energy supplied after 1.11.2008 shall be fixed in accordance with Electricity Board's memo dated 17.11.2008.

iii) The wind energy banked as on 1.11.2008 shall be adjusted in five equal instalments between 1.12.2008 and 30.4.2009 and equivalent additional demand and additional energy quota would be allocated.

iv) The redrawn demand quota and energy quota shall be set off against the actual demand and energy consumed between 1.11.2008 and 30.4.2009.

v) The excess demand charges and excess energy charges for the period 1.11.2008 to 30.4.2011 shall be computed with reference to the redrawn demand and energy quota.

B. For the period 1.5.2009 to 31.10.2009

- i) For the period 1.5.2009 to 31.10.2009 the formula contained in Electricity Board's memo dated 17.11.2008 shall apply. If the energy quota and demand quota during the period has been exceeded by the captive user, he will be entitled to draw from energy banked during this period to the extent of adjusting excess demand and excess energy consumption.
  
- ii) The excess demand charges and excess energy charges shall be determined with reference to the demand and energy quota calculated as given in the previous paragraph.

C. With effect from 1.11.2009

- i) From 1.11.2009 the base demand and base energy may continue to be fixed with reference to the formula laid down in the Electricity Board's memo dated 1.11.2008.

ii) Unutilised banked energy available as on 1.11.2009 may be utilized by the wind captive users in five equal monthly instalments from 1.11.2009 to 31.3.2010 in addition to the current generation of the that month.

iii) From 1.11.2009, all captive users shall declare on the first day each of every month, the energy proposed for captive use for the following month which shall be considered 'B' and 'F' for the purpose of energy quota and demand quota respectively in terms of the memo of the Electricity Board dated 17.11.2008 and the energy so declared shall roughly be the monthly average generation.

22. In the above order dated 28.10.2009, the State Commission allowed drawal of banked energy in addition to energy available from the generation of the current month. Further from 1.11.2009, the captive users had to declare on the first day of the month the energy proposed for captive use for the following month which shall be considered as 'B' and 'F' in

the formula specified in the memo dated 17.11.2008 for the purpose of energy quota and demand quota. The declared energy shall roughly the monthly average generation i.e.  $1/12^{\text{th}}$  of annual energy generation. Thus, the declared energy may not be the total energy injected by the captive wind generator during the month but the energy intended to be utilized by the captive consumer which shall roughly be equal to a monthly average generation, i.e. monthly average of annual energy generation which will not be equal to actual generation in the month. This order has to this extent modified the earlier memo dated 17.11.2008, that the 'B' & 'F' were to be based on the declared energy with effect from 1.11.2009. The Electricity Board also started intimating demand and energy quota to the consumers based on the advance declaration of energy by the consumers.

23. The last paragraph of the memo dated 17.11.2008 quoted in paragraph 16 above provides for comparison of demand and energy used by the consumer with the deemed demand and

energy supplied by the generator at the end of the month. Therefore, at the end of the month if the captive consumer has not been able to consume the entire intended supply from the wind energy generator, then 'B' has to be restricted to the actual energy consumed by the captive consumer from the wind energy generator. If 'B' is restricted to the actual energy consumed by the consumer logically 'F' has also to be based on the actual energy consumed from the wind energy generator during the month. The contention of the Appellants is that 'F' should be based on the energy generation even though they have not objected to 'B' being restricted to the actual energy from captive generation utilized by the consumer allowing the balance energy, if any, for banking. However, the procedure of advance declaration of energy from captive wind energy generator by the State Commission's order dated 28.10.2009 and the Electricity Board also intimating demand energy quota to the consumer created an ambiguous situation as once the quota has been fixed on the basis of the advance declaration and the consumer abided by it, the same can

not be changed subsequently. This was the contradiction between the memo dated 17.11.2008 which was effective as per the State Commission's order dated 28.11.2008 and order dated 28.10.2009, necessitating a clarification by some of the consumers and field officers.

24. Subsequently, the State Commission by the order dated 7.9.2010 dispensed with the need for advance declaration by the consumer of procurement of captive power as stipulated in the order dated 28.10.2009. By this order, the State Commission also decided that the equivalent demand brought by the consumer from captive and third party sources would be subtracted from the maximum recorded demand of the consumer and balance would be the demand actually supplied by the Electricity Board. If this figure exceeds the demand quota of the Electricity Board, the consumer would be liable to pay excess demand charges. Similarly, the energy purchased from captive and third party sources would be subtracted from the total energy consumed by the consumer and the balance would be deemed to be the energy actually supplied by the Electricity

Board. If this energy exceeded the energy quota of the Electricity Board, excess energy charges will be payable by the consumer. Thus the procedure was made very clear by the order dated 7.9.2010 passed by the Commission.

25. It is also important to refer to the wind energy tariff order no. 1 of 2009 dated 20.3.2009 passed by the State Commission before the system of advance declaration was introduced by the order dated 28.10.2009. This order clearly permits the slotwise banking for captive wind energy generator to enable unit to unit adjustment for the respective slots towards rebate/extra charges and payment for unutilized banked energy at the end of the year by the distribution licensee. Paragraph 8.2.3 clearly stipulates how the energy generated by the wind energy generator in a month will be adjusted against the consumption of the captive consumer during that month and if the energy generated exceeds the consumption the balance shall be reckoned as the banked energy for that month. For the following month also, the generation will be first adjusted

against the consumption. If the consumption exceeds the generation in the following month, the energy banked in the previous month shall be drawn to the required extent. However, if the consumption in the following month is also lesser than the generation, the balance energy will also be banked along with the energy banked in the previous month. This procedure shall be repeated every month.

26. The above order dated 20.3.2009 also indicates how energy charges and demand charges of the captive user will be calculated. The net energy consumed by the captive user from the distribution licensee will be calculated slotwise after adjusting the slotwise generation by the wind generator. Paragraph 8.7.4 of the order describes the demand charges. The demand recorded by the consumer will have two components namely the demand supplied by the distribution licensee and the demand supplied by the wind energy generator. According to the order dated 20.3.2009, in computing the demand supplied by the

generator, the total generated units consumed by the consumer have to be used.

27. On going thorough State Commission's orders dated 28.11.2008, the memo of the Electricity Board dated 17.11.2008 and wind energy Tariff Order dated 20.3.2009, it has to be held that the actual energy supplied by the captive wind energy generator and calculated demand or equivalent demand supplied by the captive WEG have to be based on the actual energy from the captive WEG consumed by the consumer in a month.
28. Firstly, because the memo dated 17.11.2008 specifies the method for fixing the demand and energy quota for HT consumers partially using power from captive power plant and therefore, the energy consumption, energy supplied by the CPP, the base demand as well as calculated demand supplied by the CPP has to be with respect to the supply to the consumer. CPP could be supplying power to more than

one consumer. Therefore, the formulation given in the memo dated 17.11.2008 has to be with respect to the supply by the captive power plant to the consumer. If 'A' is measured against the consumption, 'B' should also be measured against consumption. If 'B' in the formulation is related to actual energy consumed by the captive consumer from the CPP, 'F' should also be calculated based on the energy supplied by the CPP to the consumer during the month.

29. Secondly, the note in the memo dated 17.11.2008 states that the distribution licensee at the time of monthly meter reading would compare the demand and energy used by the consumer with the deemed demand and energy supplied by the generators.

30. Thirdly, the State Commission's orders dated 28.11.2008 and 20.3.2009 permit utilization of the banked energy in subsequent months. If the equivalent demand is calculated corresponding to the energy injected by the wind energy

generator in a month without the entire energy being actually consumed by the consumer, it would result in double benefit to be given to the banked energy i.e. for providing the additional demand quota to the captive user for that energy in the current month as well as banking of the same energy which could be either re-used for providing additional energy and demand quota in the subsequent months or for payment at the end of the Financial Year.

31. Fourthly, the wind energy tariff order dated 20.3.2009 clearly indicates that the demand supplied by the generator has to be based on the units consumed by the consumer and not on the basis of energy injected by the wind energy generator.

32. However, the State Commission's order dated 28.10.2009 modified the memo dated 17.11.2008 to the extent that the demand and energy quota was to be fixed as per the advance declaration of energy from captive generator by the

consumer. Accordingly, the Electricity Board issued energy and demand quota for the consumer based on the advance declaration by the consumer. This created some ambiguity and difficulty in implementation of the order dated 28.10.2009 resulting in seeking of clarification by some of the field officers of the distribution licensees from Chief Financial Controller. However, when the clarificatory letter dated 25.6.2010 was issued, the system of advance declaration of energy was in vogue for fixation of energy and demand quota of the captive users.

33. Ld. Counsel for the Appellants have also referred to the State Commission's orders dated 14.3.2011 in DRP no. 13 and 14 of 2010 by which the Electricity Board was estopped from changing the demand and energy quota for the month of July, 2010 from some consumers subsequently after the same has been intimated to the consumers and the consumers have abided by the same.

34. We find that the order dated 28.10.2009 by the State Commission modified the memo dated 17.11.2008 of the Electricity Board to the extent that the captive users had to declare on the first of every month the energy proposed for captive use which was to be considered for 'B' and 'F' in the formula specified in the memo dated 17.11.2008 and the Electricity Board on the basis of the advance declaration by the captive user intimated the demand and energy quota to the consumers. Thus after the modification in the procedure by order dated 28.10.2009 the consumers had the understanding and legitimate expectation that the equivalent demand will be based on the declared energy and not the energy actually consumed and excess demand and excess energy charges will be calculated on the demand and energy quota communicated by the Electricity Board. Once the quota has been fixed at the beginning of the month by Board based on the advance declaration by the consumer, and the consumer abided by it, it was unfair to change the same subsequently, as also held by the State Commission

in its orders in DRP no. 13 and 14 of 2010 for some consumers related to billing for the month of July, 2010.

35. However, once the system of advance declaration was dispensed with by the order dated 7.9.2010, the memo dated 17.11.2008 as it originally stood as interpreted by us in the preceding paragraphs will take effect as read with the order dated 7.9.2010.

36. In view of above we feel that the State Commission was not correct in holding that the clarification will take effect from 25.6.2010 because the procedure of advance declaration introduced by order dated 28.10.2009 was still in vogue and the consumers were being intimated their demand and energy quota by the Electricity Board according to the advance declaration of energy by them.

37. The procedure of advance declaration introduced by order dated 28.10.2009 was dispensed with only by the State Commission's order dated 7.9.2010 and the revised

procedure came into vogue following that order. Thus till September, 2010, the quota as communicated to the consumers based on the advance declaration of energy by the consumers in consonance with the order dated 28.10.2009 shall be used i.e. the equivalent demand will be calculated on the basis of the declared energy and not the consumed energy. Thereafter, from 1.10.2010 the method of calculating equivalent demand on the basis of wind energy actually consumed or adjusted in consonance with the memo dated 17.11.2008 and order dated 7.9.2010 shall take effect.

38. The finding of the State Commission in DRP no. 13 and 14 of 2010 will not be relevant after the passing of the order dated 7.9.2010 as the findings in DRP no. 13 and 14 of 2010 are pertaining to the billing for the month of July, 2010 when the procedure for advance declaration was in vogue.

**39. Summary of findings:**

- i) On going through the State Commission's order dated 28.11.2008, State Electricity Board's memo dated 17.11.2008 and wind energy tariff order dated 20.3.2009, we hold that the equivalent demand has to be based on the energy from wind energy generator actually consumed by the captive user or energy adjusted in a month.**
  
- ii) However, the memo dated 17.11.2008 was modified by the State Commission order dated 28.10.2009 to the extent that the demand and energy quota was fixed on the basis of advance declaration of captive energy by the consumer. This created an ambiguous situation. Once the quota has been fixed by the Electricity Board on the basis of the advance declaration and communicated to the consumer and the consumer abided by it, the same can not be changed subsequently.**

**iii) However, once the system of advance declaration was dispensed with by the order dated 7.9.2010, the memo dated 17.11.2008 in original form as interpreted in this judgment as read with the order dated 7.9.2010 shall take effect.**

**iv) Thus, it has to be held that the State Commission was not correct in holding that the clarification will take effect from 25.6.2010 because the procedure of advance declaration of energy by the consumer and communication of demand and energy quota as per the order dated 28.10.2009 was still in vogue and the same was modified only by the order dated 7.9.2010. Thus till September, 2010, the demand and energy quota as communicated to the consumers by the Electricity Board based on the advance declaration of energy by the consumers will have effect for calculation of excess demand and energy charges. Thereafter, from 1.10.2010, the method of calculating the equivalent demand on the basis of energy from wind energy**

**generator actually consumed or adjusted in consonance with the order dated 7.9.2010 read with memo dated 17.11.2008 shall take effect.**

**40. In view of the above we allow the Appeals and set aside the impugned order to the extent indicated above. The State Commission is directed to pass the consequential order within 30 days from the date of communication of this judgment. No order as to Costs.**

**41. Pronounced in the open court on this 12<sup>th</sup> day of December, 2012.**

**(RakeshNath)  
Technical Member**

**(Justice M. KarpagaVinayagam)  
Chairperson**

√  
**REPORTABLE/~~NON-REPORTABLE~~**

**mk**