

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

Appeal Nos. 177, 178, 182, 183, 186 & 187 of 2013

Dated: 29th May, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

Appeal No. 177 of 2013

In the matter of:

The Chief Financial Controller/Revenue,

Tamil Nadu Electricity Board,

7th Floor, Eastern Wing,

NPKRR Maligai,

No. 144, Anna Salai,

Chennai-600 002

... Appellant (s)

Versus

1. **M/s. Best Cotton Mills, HT SC. No. 129 & 271,**

(Unit of Best Corporation Limited),

Pollachi Road,

Dharapuram,

Dharapuram-638 673

Repres. by its Manager P. Muthukrishnan

2. **Tamil Nadu Electricity Regulatory Commission,**

Rep. by its Secretary,

No. 19-A, Rukmani Lakshmi pathy Salai,

(Marshalls Road), Egmore,

Chennai-600 008.

...Respondent(s)

Appeal No. 178 of 2013

In the matter of:

The Chief Financial Controller/Revenue,

Tamil Nadu Electricity Board,

7th Floor, Eastern Wing,

NPKRR Maligai,

No. 144, Anna Salai,

Chennai-600 002

... Appellant (s)

Versus

1. **M/s. Spictex Cotton Mills, HT SC. No. 221,**
63-B.P.N. Road,
Thirupur-641602,
Repres. by its Manager S.P. Satheesh Kumar

2. **Tamil Nadu Electricity Regulatory Commission,**
Rep. by its Secretary,
No. 19-A, Rukmani Lakshmi pathy Salai,
(Marshalls Road), Egmore,
Chennai-600 008. ...Respondent(s)

Appeal No. 182 of 2013

In the matter of:

The Chief Financial Controller/Revenue,

Tamil Nadu Electricity Board,
7th Floor, Eastern Wing,
NPKRR Maligai,
No. 144, Anna Salai,
Chennai-600 002

... Appellant (s)

Versus

1. **M/s. Super Sales India Ltd., HT SC. No. 155,**
Ayyampalayam,
Jamin Muthur (PO),
Pollachi, Coimbatore,
Repres. by its General Manager-Finance
S.Ravaindran

2. **Tamil Nadu Electricity Regulatory Commission,**
Rep. by its Secretary,
No. 19-A, Rukmani Lakshmi pathy Salai,
(Marshalls Road), Egmore,
Chennai-600 008. ...Respondent(s)

Appeal No. 183 of 2013

In the matter of:

The Chief Financial Controller/Revenue,

Tamil Nadu Electricity Board,
7th Floor, Eastern Wing,
NPKRR Maligai,
No. 144, Anna Salai,
Chennai-600 002

... Appellant (s)

Versus

1. **Aswin Textiles (P) Ltd., HSC No. 200,**
Therpattipirivu,
Palani Road,
Dharapuram-638 673,
Repres. by its Manager-K. Periyasamy

2. **Tamil Nadu Electricity Regulatory Commission,**
Rep. by its Secretary,
No. 19-A, Rukmani Lakshmiipathy Salai,
(Marshalls Road), Egmore,
Chennai-600 008. ...Respondent(s)

Appeal No. 186 of 2013 & 187 of 2013

In the matter of:

The Chief Financial Controller/Revenue,

Tamil Nadu Electricity Board,
7th Floor, Eastern Wing,
NPKRR Maligai,
No. 144, Anna Salai,
Chennai-600 002

... Appellant (s)

Versus

1. **Bannari Amman Spinning Mills Ltd.,**
HT SC No. 171, Unit-1, HT SC No. 171,
Vadamaduri,
Vedasandur Taluk,
Repres. by its General Manager-K. Prabakaran

2. **Tamil Nadu Electricity Regulatory Commission,**
Rep. by its Secretary,
No. 19-A, Rukmani Lakshmiipathy Salai,
(Marshalls Road), Egmore,
Chennai-600 008. ...Respondent(s)

Counsel for Appellant(s) :

Mr. P.H. Arvindh Pandian, Sr. Adv.
Mr. C.V. Shailandhran
Mr. S. Vallinayagam

Counsel for the Respondent(s):

Mr. S.P. Parthasarathy,
Mr. R.S. Pandyaraj,
Mr. Darpan K.M.

JUDGMENT

RAKESH NATH, TEHNICAL MEMBER

These Appeals have been filed by Tamil Nadu Electricity Board against the order dated 17.4.2013 passed by Tamil Nadu Electricity Regulatory Commission (“State Commission”) in a batch of cases in which it was held that the Audit slips and the consequential demand notices issued by TANGEDCO for alleged violation of demand and energy quota imposed by TANGEDCO for the months of April’10 and May’10 were illegal and unsustainable and were against the order of this Tribunal in Appeal no. 51 and 56 of 2012 dated 12.12.2012.

2. The Appellant is the Electricity Board. The first Respondent in these Appeals are owning wind mills in Tamil Nadu and are generating electricity therefrom and are consuming the same in their respective

industries as per the wheeling agreements executed between them and TANGEDCO, the successor of the Electricity Board after reorganization. The second Respondent is the State Commission.

3. The facts of the cases are as under:

i) On 17.11.2008 the Appellant issued instructions for computation of demand and energy quota for HT consumers who partly used power from Captive Power Plants/third party purchases on account of introduction of Restriction & Control (R&C) measures.

ii) On 28.10.2009, in a *suo motu* proceedings, the State Commission decided the computation of demand and energy quota in respect of captive consumers of Wind Energy Generators (WEG).

(iii) In the order dated 28.10.2009, the State Commission decided that from 1.11.2009 onwards, the captive users of wind energy after having taken into account the generation of wind energy from their WEGs had to declare on the first day of the month, the proposed energy from wind generator for captive use for the following month, which would be considered as 'B' and 'F' in the formula already specified in Memo dated 17.10.2008 for the purpose of fixing energy and demand quota for that month.

(iv) The Respondents have been making advance declaration of the energy proposed for captive use for the following month and on that basis energy quota was fixed by TANGEDCO and communicated to the Respondents. Accordingly, energy charges were collected by TANGEDCO as per the actual consumption without levying any penalty charges.

(v) On 25.6.2010, the Chief Finance Controller, TANGEDCO issued a clarification regarding fixation of quota to the effect that in the 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 would be adjusted against consumption and the excess energy supplied would be sent for banking and, therefore, the deemed demand/equivalent demand would also be allowed only based on units adjusted and not based on energy injected into the grid.

(vi) The said clarification dated 25.6.2010 was challenged before the State Commission and by order dated 28.12.2011 the State Commission upheld the validity of the same.

(vii) In the meantime on 7.9.2010, the State Commission while dealing with the matter of fixation of quota held that the consumer was permitted to consume energy upto the sanctioned demand from third party sources or captive power sources and in such a situation there would be no need for advance declaration by the consumer, as stipulated in the earlier order dated 28.10.2009. The State Commission also decided that the equivalent demand brought in by the consumer from captive and third party sources would be subtracted from the recorded maximum demand of the consumer and the balance would be the demand actually supplied by the Electricity Board.

viii) As against the order dated 28.12.2011 of the State Commission upholding the validity of Memo dated 25.6.2010 of TANGEDCO, an Appeal was filed before this Tribunal in Appeal nos. 51 and 56 of 2012.

The Tribunal in its judgment dated 12.12.2012 concluded that circular dated 25.6.2010 as upheld by the State Commission was correct but for the period from 28.10.2009 to 7.9.2010, the demand and energy quota as communicated to the consumers by the Electricity Board based on the advance declaration by the consumers will have an effect for calculation of excess demand and energy charges. Thereafter from 1.10.2010 onwards, the method as decided in this order dated 7.9.2010 of the State Commission read with memo dated 17.11.2008 shall take effect.

ix) The Appellant issued demand notice dated 16.11.2011 to the Respondent industries towards excess energy/demand penalty for the period April 2010 and May 2010 vide audit slip dated 10.11.2011.

x) This demand notice was challenged by the Respondent industries before the State Commission. The State Commission vide the impugned order dated 17.4.2013 allowed the petitions filed by the Respondents. Aggrieved by the impugned order of State Commission, the Appellant Electricity Board has filed these Appeals.

4. Since all the above Appeals are against the same impugned order, this common judgment is being rendered.

5. TANGEDCO, the successor of the Electricity Board, has made the following submissions:

i) The State Commission by order dated 28.10.2009 exempted the quantum of captive wind energy consumed by a consumer from R&C measures and made the R&C measures applicable only to the

TANGEDCO power. The order also directed advance declaration of quantum of captive energy to be brought in by a captive consumer for the purpose of determining the TANGEDCO quota of power only in terms of TANGEDCO memo dated 17.11.2008.

(ii) The Appellant by memo dated 25.11.2009 intimated the procedure for calculation of energy and demand quota of TANGEDCO power and the procedure for calculation of excess energy and demand consumed by a wind captive consumer in excess of TANGEDCO's quota on the basis of declaration by wind energy captive consumer.

(iii) This Tribunal in Appeal no. 51 and 56 of 2012 decided that demand and energy should be calculated on the basis of actual energy consumed at the consumption end as held in paragraph 19 of the judgment. The State Commission did not consider the

above finding of the judgment and passed the impugned order relying on paragraph 22 of the judgment. The said paragraph does not deal with the issue decided by the State Commission. The relevant paragraphs are 19, 24, 34 and 39 of the judgment which deal with the issue but have not been considered by the State Commission.

(iv) The State Commission has not verified the wrong figures and facts produced by the Respondents in the tables before it and did not advert to and compared the tables with figures and calculations produced by the Appellant before the State Commission in its counter affidavit, which were as per the earlier order of the State Commission and the Tribunal.

(v) The Respondent industrial consumers were entitled to draw power from TANGEDCO grid upto the quota fixed for TANGEDCO power based on the energy declared (proposed) by the Respondents for that month. The excess energy charges are levied on actual consumption only after considering actual captive consumption as per the findings of the Tribunal in Appeal nos. 51 and 56 of 2012.

(vi) In the impugned order, the State Commission has erroneously brought in “overall demand/energy” quota whereas the fixation of quota is only in respect of demand/energy supplied by the Appellant.

6. According to the Respondents, for the period between 1.10.2009 and 7.9.2010, it has been decided by the Tribunal in order dated 12.12.2012 in Appeal nos. 51 and 56 of 2012 that the energy quota fixed by

TANGEDCO and communicated to the consumer on the basis of advance declaration will alone have effect for calculation of excess demand and energy charges. Thereafter, only from 1.10.2010 onwards, 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. As such, the argument of the Appellant can hold good only from 1.10.2010 and cannot be held good for the period upto September 2010. The impugned demand pertains to the months of April and May 2010 i.e. before 7.9.2010. Hence the argument of the Appellant is misconceived and does not hold good for the period in question. The State Commission has correctly interpreted the judgment of this Tribunal in Appeal nos. 51 and 56 of 2012.

7. On the above issues we have heard learned counsel for the TANGEDCO and learned counsel for the Respondent no. 1 in all the Appeals.

8. In view of the rival contentions of the parties, the following questions may arise for our consideration:

(i) Whether the excess demand and excess energy have to be computed with respect to the total quota fixed on the basis of the advance declaration of captive power generation before the commencement of the month without considering the actual captive generation brought in by the captive consumer during the month?

(ii) Whether the State Commission has correctly interpreted the judgment of this Tribunal in Appeal nos. 51 & 56 of 2012 in computing the

excess energy and excess demand charges for the months of April & May 2010?

9. Let us now examine the findings of this Tribunal in judgment dated 12.12.2012 in Appeal no. 51 and 56 of 2012 in the matter of Indian Wind Power Association vs. Tamil Nadu Electricity Regulatory Commission & Others. The findings of the Tribunal are summarized as under:

“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.”

10. This Tribunal held that the procedure of advance declaration of energy from captive wind energy generator for captive use and communication of demand and energy quota by the Electricity Board as per the State Commission's order dated 28.10.2009 was in vogue till the same was modified by the State Commission's order dated 7.9.2010. Thus, the demand and energy quota communicated by the Electricity Board on the advance declaration of energy

by the consumers will have the effect for calculation of excess demand and excess 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 7.11.2008 shall take effect. The period in question here is April and May 2010 which is prior to October 2010. Thus, as per the Tribunal's judgment, the demand and energy quota as communicated by the Electricity Board in advance based on the advance declaration of energy by the captive consumer will be used for calculation of excess demand/excess energy charges.

11. Let us now examine the findings of the State Commission in the impugned order.

12. We find that the State Commission has reproduced the entire analysis and findings of the judgment of this Tribunal in Appeal no. 51 and 56 of 2012 and thereafter, the State Commission held as under:

“16.15. From the Order of the Appellate Tribunal for Electricity in Appeal No. 51 and 56 of 2012, relevant paragraph of which are extracted above, the following conclusions emerge :-

1. 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.

2. The Electricity Board on the basis of the advance declaration by the captive user intimated the demand and energy quota to the consumers.

3. As per para 22 of APTEL's order in Appeal No.51 and 56 of 2012, 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.

16.16. The Order of the Hon'ble Appellate Tribunal for Electricity Appeal Nos 51 and 56 of 2012 has not been challenged by any party before the Supreme Court.

16.17. In view of the above, the only issue which requires consideration is whether the consumer has abided by the quota fixed at the beginning of the month by TANGEDCO based on the advance declaration by the consumer. For this purpose the details of the quota, actual consumption, etc as furnished by the petitioners in their new type set filed on 8-2-2013 are extracted below:-

.....”.

“18. From the Tables extracted above, it can be seen that there is no excess demand and excess energy consumption in most of the cases. Excess demand and excess energy has been shown only in case of DRP No. 2 of 2012 in respect of M/s. Spictex Cotton Mills Pvt. Ltd. which is stated to have been already paid.

19. Since the quota has to be fixed based on the advance declaration by the consumers in line with the order of the APTEL in Appeal Nos.51 and 56 of 2012, especially para 22 of the order, during the relevant period, the Commission has not found any violation of overall demand and energy quota fixed by TANGEDCO and the actual consumption by the petitioners except in the case of DRP No. 2 of 2012 relating to M/s Spictex Cotton Mills Pvt Ltd. Hence the BOAB Audit slips and consequential demand notices which are impugned in D.R.P.No.21 of 2011; D.R.P.No.28 of 2011; D.R.P.No.1 of 2012; D.R.P.No.4 of 2012 and D.R.P.No.5 of 2012 are

hereby set aside. So far as the petitioner in D.R.P.No.2 of 2012 is concerned no relief can be granted since the petitioner has admitted in paras 7 and 8 of his petition that there was an excess consumption of demand quota during normal hours and excess consumption of demand and energy quota during peak hours in the month of April 2010 and excess consumption of demand and energy quota during peak hours in May 2010. All the six petitions are disposed of on the above lines. There shall be no order as to cost.”

13. From the perusal of the impugned order, it is clear that the State Commission has correctly interpreted the judgment of this Tribunal in Appeal nos. 51 & 56 of 2012 and drawn the conclusion in consonance with the findings of the Tribunal. Accordingly, both the questions framed above by us are answered in positive and against the Appellant.

14. In view of above, we do not find any merit in the contentions urged by the Appellant.

15. **Summary of our findings:**

i) According to the judgment of this Tribunal in Appeal no. 51 & 56 of 2012, the demand and energy quota as communicated by the Electricity Board in advance based on the advance declaration of energy proposed to be made available from captive generation will be used for calculation of excess demand and excess energy charges till the new procedure as decided by the State Commission dispensing the need for advance declaration by the captive consumer by order dated 7.9.2010 has been implemented. The period in question is April & May 2010 and hence the total demand and energy quota communicated by the Electricity Board/TANGEDCO on the basis advance declaration of energy proposed to be made available from captive generation will be

the basis for calculation of excess demand/energy as per the above judgment of the Tribunal.

ii) The State Commission has correctly interpreted the findings of this Tribunal in Appeal no. 51 & 56 of 2012 and drawn the correct conclusion in the impugned order dated 17.4.2012 which is in consonance with the findings of this Tribunal.

16. In view of above, the Appeals are dismissed and the State Commission's impugned order is upheld. No order as to costs.

17. Pronounced in the open court on this **29th day of May, 2014.**

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

REPORTABLE/~~NON-REPORTABLE~~

VS