

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 02ndDay of January 2025

PRESENT:

Thiru K.Venkatesan

.... **Member**

and

Thiru B.Mohan

.... **Member (Legal)**

P.R.C. No. 4 of 2024

M/s.Rollatainers Limited,
Having its registered office at
Plot No.73-74, Phase – III, Industrial Area,
Dharuhera, Rewari,
Haryana – 123106.

.... **Petitioner**
(Adv.S.Eshwar)

1. Tamil Nadu Generation and Distribution Corporation Limited
Rep.by its Chairman,
NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.
2. Electricity Ombudsman,
Tamil Nadu Electricity Ombudsman
4th Floor, SIDCO Corporation Office Building,
Thiru-Vi-Ka Industrial Estate, Guindy,
Chennai – 600 032.
3. The Chairman,
Consumer Grievance Redressal Forum,
Krishnagiri EDC, TANGEDCO,
110 KV SS Compus,
Krishnagiri – 635 002.
4. The Superintending Engineer,
TANGEDCO, Tuticorin Electricity Distribution Circle,
Tuticorin.
5. The Superintending Engineer,
TANGEDCO, Krishnagiri Electricity Distribution Circle,
Krishnagiri – 635002.

6. Rajkumar Impex Private Limited,
Rep. by its Managing Director,
New No. B-603, Keshav Dugar Apartments,
1, East Avenue, Keshava Perumalpuram,
R.A.Puram, Chennai – 600 028.

7. E.Saravana,
Proprietor,
M/s.E.S.Ligic Power,
Door No.16, HIG, New Housing Board,
Second Phase,
Krishnagiri – 635 001,
Krishnagiri District.

..... Respondents

ORDER

This P.R.C. No. 4 of 2024 arises out of the Petition filed by M/s. Rollatainers Limited, in S.R.No.118 of 2024 with a prayer (a) to issue an order, or direction calling for the records on the file of the 2nd Respondent pertaining to the Impugned demand notice in Lr. No.SEK/DFC/RCS/ HT/F. Audit/HT.Sc.No.247/D.No./16, dated 29.08.2016, and quash the same as being arbitrary and illegal and thereby render justice.

b) to issue an order, or direction calling for the records on the file of the 5th Respondent pertaining to the impugned demand notice in Lr.No.SEK/DFC/RCS/HT/F.Audit/HT.SC.NO.247/D.No./16, dated 29.08.2016 and quash the same as being arbitrary and illegal and for consequential orders.

c) and pass such further or other orders as the Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

This matter coming up for hearing on 19-11-2024 for deciding the very maintainability of the petition in the presence of Thiru.N.R.Sai Gautham, Advocate for the Petitioner, on consideration of the submissions made by the Counsel for the Petitioner, and on perusal of records this Commission passes the following:

ORDER

1. The present petition is taken up for consideration to decide its maintainability in view of the fact that the petitioner is a consumer of the respondent and that any dispute between an electricity consumer and a licensee shall be heard only by the concerned CGRF and thereafter by the Electricity Ombudsman, under the scheme of the Electricity Act 2003 and not by the Commission.

The background leading to the filing of the present petition as follows:

1.1. The Petitioner is engaged in the business of manufacturing and supplying automotive/ engine parts and products such as crankshafts, pertaining to bikes and other vehicles. The Petitioner established its factory in the year 2013 on the land allotted to it by SIPCOT near Hosur. The Petitioner is provided with High Tension Electricity Supply by TANGEDCO in HT SC No. 247 with the sanctioned demand of 2000 KVA to run the Petitioner's Industry.

1.2. The Petitioner entered into an Energy Wheeling Agreement with the 1st TANGEDCO for the captive use of power for the years 2014 and 2015. The Petitioner

was allowed 1,20,000 units as against the allotted consumption of 6,00,000 units. Similarly, the Petitioner was permitted to use only 700 KVA as against the sanctioned demand of 2000 KVA. Hence, the Petitioner was forced to procure power from third-party sources. Accordingly, the power which was procured subsequently through third-party sources was wheeled through the grid and the units supplied were adjusted against the consumption. The Petitioner was using third-party power supplied by a trader M/s. ES Logic Power, which was generated by a power generator viz., Rajkumar Impex Private Limited. This arrangement was brought into force after obtaining a "No Objection Certificate" from TANGEDCO.

1.3. The Petitioner gave an undertaking for Short Term Purchase of Power under Open Access (STOA) as per the Regulations of TNERC (Open Access) Regulations, 2005. Pursuant to giving the undertaking, on a monthly basis, TNEB/ TANGEDCO determined the units consumed at the point of consumption based on the meter reading in the meter installed by the TNEB/ TANGEDCO at the premises of the Petitioner. Based on the statement submitted by TNEB/ TANGEDCO, the Petitioner paid the consumption charges to TANGEDCO after deducting the amount to be paid to the 7th Respondent.

1.4. This practice was in vogue throughout the agreement period. Needless to state, this was done in accordance with the regulations and at the instance of the 4th Respondent. The Petitioner was never furnished with copies of the SLDC approval and further, the 4th Respondent was never in the habit of providing the Petitioner with the injection statement prepared every month at the generation end. In fact, the Petitioner

company was provided with the injection statement only after the Petitioner sought for production of the same in its reply to the demand notice at a later point in time.

1.5. On 29th August 2016, after a lapse of 7 to 9 months post the generation of the bills pertaining to November 2015, December 2015, and January 2016, the 5th Respondent, issued a notice under Lr.No.SEK/DFC/RCS/HT/F.Audit/HT.Sc.No.247/D.No./16 demanding a sum of Rs. 32,59,073/- as due to be paid by the Petitioner towards consumption charges on account of a “shortfall that had been identified”. By representation dated 09.09.2016, the Petitioner issued an appropriate response to the demand. Without considering the representation of the Petitioner, the 5th Respondent issued a letter dated 20.09.2016 (Letter No. SE/KEDC/DFC/AAO/RCS-HT/F.HT SC No. 247/D./16) demanding the Petitioner to pay a sum of Rs. 32,59,073/- (Rupees Thirty-Two Lakhs Fifty-Nine Thousand Seventy-Three Only). Aggrieved, the Petitioner filed a Writ Petition W.P. No. 33970 of 2016. Vide order dated 17.11.2021, the Hon’ble High Court disposed of the Writ Petition with a direction to the Petitioner to approach the 3rd Respondent for redressal of its grievance.

1.6. As per the direction of the Hon’ble High Court, the Petitioner filed an online complaint dated 21.11.2022 on the file of the 3rd Respondent. The complaint was numbered as Petition No. 4 of 2022. The 3rd Respondent issued a notice of hearing dated 14.03.2023 informing the Petitioner of a hearing scheduled on 15.03.2023 and had it postponed to 18.03.2023 under the pretext of administrative reasons. On the assigned date, one A. Anchala Sahaya Mary presided over the proceeding. The concerned personnel of the Petitioner, who had full knowledge of the facts and

circumstances of the case could not appear on the assigned date. At his behest, the Petitioner had assigned one Mr. Santhosh Kumar, Manager-HR to seek a short accommodation for the appearance of the concerned person and for submission of the relevant documents. A request in writing was made to the Presiding Officer named above. Since the concerned person was unavailable on the date of the hearing, the Petitioner could not submit the relevant documents required to have its grievance redressed. To the utter shock of the Petitioner, the Presiding Officer above named proceeded with the hearing and even went on to pass an order dated 18.03.2023.

கண்டறியப்பட்டவை :-

மனுதாரர் கூறும் மின்சாரம் கொள்முதல் சம்பந்தப்பட்ட அசல் ஆவணங்கள் மற்றும் போலியான ஆவணங்கள் பார்வையிடப்பட்டது.ஆவணங்கள் போலியானது என மின்வாரியத்தால் கண்டறியப்பட்டுள்ளதை மனுதாரரும் விசாரணையில் ஏற்றுக் கொண்டுள்ளார்.

தீர்ப்பாணை

மின்சார கொள்முதல் போலியான ஆவணங்கள் அளித்து மின் கட்டண சலுகை பெற்றுள்ளது உறுதிபடுத்தப்பட்டுள்ளதால், இத்தொகையை மின் இணைப்புதாரர் செலுத்த வேண்டும். எனவே மனுதாரர் கோரிக்கை ஏற்க இயலாமல் நிராகரிக்கப்படுகிறது. மேலும் மேற்படி நிலுவை தொகையை இத்தீர்ப்பாணையிலிருந்து 30 நாட்களுக்குள் செலுத்தவும் மனுதாரருக்கு உத்தரவிடுகிறது.

1.7. Aggrieved by the order of the 3rd Respondent, the CGRF, the Petitioner preferred a statutory appeal before the 2nd Respondent the Electricity Ombudsman to set aside the order dated 18.04.2023 passed by the 3rd Respondent in Petition 4/2022.

The Learned 2nd Respondent Ombudsman returned the statutory appeal filed by the Petitioner vide Lr. No. TNEO/F. Omb. Gen. C. No.212/ D.No.578/2023, dated 04-05-2023 with the following observations:

“..... The Superintending Engineer at the generation end recorded the readings from the generator and at the end of the month and provided the injection statement to the distribution end for adjustment”

“..... The issue in the appeal petition pertains to the quantum of units purchased at the generation end. Therefore, the issue is not between the consumer and the licensee, but, between the generator and licensee. The issue of Generator and Licensee is not under the purview of Ombudsman.”

“..... As per the CGRF & Electricity Ombudsman Regulations, only a consumer can file a petition before the CGRF and further appeal to Electricity Ombudsman to settle their grievances. Since, the present appeal is filed regarding the dispute in quantum of units purchased at Generation end, the Electricity Ombudsman cannot entertain the present appeal and hence the appellant is advised to file a petition before the Hon'ble TNERC”

1.8. The excerpts clearly show that the 2nd Respondent did not adjudicate the matter on merits and has returned the statutory appeal with a preliminary finding. The 2nd Respondent Ombudsman has rightly held that since the dispute pertains to the recording of injection data at generation end by the statutory authorities, the matter at hand would not fall within the ambit of his powers and functions. That being the case, the Appellate

Authority ought to have absolved the Petitioner of any liability and ought to have directed the 4th and the 5th Respondents to proceed against the 6th and the 7th Respondents before the appropriate forum. The failure of the Appellate Authority to hold so, is perverse and warrants setting aside. It is unheard of to direct the Petitioner herein to approach TNERC for the resolution of a dispute between the generator and the licensee and by passing such an order, the 2nd Respondent has put the Petitioner to grave hardship and prejudice in proving its bonafides in the matter and has caused miscarriage of justice.

1.9. The Petitioner would like to place on record that, admittedly, it was never provided with the injection statements that were prepared by the 4th and the 5th Respondents at the time the bill was raised. The Petitioner was provided with the injection statements only upon issuance of the demand notices. The simple issue at hand pertains to a discrepancy with respect to the number of units that were injected into the grid by the third-party generator. The 5th Respondent conveniently claims “anomalies” in the injection statement and shields itself with Regulation 11 of the Tamil Nadu Electricity Regulatory Commission, Tamil Nadu Supply Code (as amended upto 31.12.2009). Admittedly, the injection statements for each month were prepared by the 5th Respondent and confirmed by the 4th Respondent, based on which bills were raised. Even assuming that there were anomalies or mistakes in the injection statement, the Petitioner fails to understand as to how such mistakes could be attributed to it. It is an irrefutable fact that the Petitioner has paid all the bills that were raised. What was owed by the Petitioner to TANGEDCO remains paid. Moreover, without foul play, there could

not be anomalies in the injection statement. Even assuming there is no foul play by the 4th or the 5th Respondent, such anomalies ought to be taken up with 6th and 7th Respondents who are responsible for wheeling power into the grid. If the 6th and 7th Respondents are found to be errant, they could be dealt with severely by the statutory authorities, but by no stretch of imagination could the Petitioner be held responsible for such anomalies.

1.10. Aggrieved by the order of the Appellate Authority, the Petitioner filed a Writ Petition before the Hon'ble Madras High Court bearing W. P. No. 32783 of 2023. As per the Order dated 03.04.2024, the Hon'ble Madras High Court has directed the Petitioner to approach the Tamil Nadu Electricity Regulatory Commission (TNERC) to resolve their disputes and also stated that if the Petitioner approaches the TNERC, then the period during which the writ petition was pending before the Hon'ble High Court is to be taken into consideration for the purpose to condoning the delay if any arises and accordingly disposed of the said writ petition.

As per regulations, meter reading at generation ought to be done in the presence of the generator and TANGEDCO officials. If some fraud has taken place, it must have been done in collusion with the TANGEDCO officials.

2. Having gone through the subject matter brought up by the petitioner herein, we are of the view both forum below, namely, CGRF & Ombudsman erred in their decision on the jurisdictional issue. The matter, is certainly not a one concerning a consumer who avails supply from the licensee to treat it as a consumer dispute. Rather, it is a case of dispute between an Open Access consumer and the licensee which does not fall within

purview of CGRF & EO Regulation. While the CGRF ought not to have entertained the petition at all in view of Regulation 44 of TN Grid Code, the Electricity Ombudsman, also fell in error to the extent of holding that it is a dispute between a generator and licensee although he rightly held that he had no jurisdiction. The irrefutable fact that it is a case of dispute between an Open Access Consumer and licensee which is governed by Regulation 44 of TNERC Grid Connectivity and Open Access Regulation. Having said that, it is to be noted that all dispute between Open Access Consumer and licensee shall be settled only by a nodal agency in the first instance, which is SLDC in the instant case, and only thereafter the matter can be referred to the Commission.

3. However, considering the inordinate delay that has already occurred and not to entail further loss of time, and further keeping in view the direction of Hon'ble High Court we are inclined to take the petition on the file of the Commission.

Accordingly, the Registry is directed to register the petition in S.R.No.118 of 2024 as a Miscellaneous Petition and list it.

Sd/-.....
Member (Legal)

Sd/-.....
Member

//True copy//

**Secretary
Tamil Nadu Electricity
Regulatory Commission**