(2013) 01 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No''s. 28429, 28667, 28668, 30409, 30410, 30411, 30454, 30455, 30456, 30090, 30091, 30092, 30141, 30067, 30089, 30122, 29167, 29168, 29169, 29170, 29171, 30148, 30149, 30271, 30272, 30283, 30284, 30336, 30451, 30611, 30612, 30628, 30661, 312

M/s. Selvi Spinning Mill No: 27/5, T.P. Road Kumarapalayam Post Annur - 641653 — APPELLANT

Vs

The State of Tamil Nadu and Others — RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)
Electricity Act, 2003 — Section 9(2)

Citation : (2013) 01 MAD CK 0115

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : N.L. Rajah, R.S. Pandiyaraj / S. Sivanandam and Mr. K. Seshadri in W.P. 31219, 32748 and 32749 of 2012, Mr. S. Sairaman in W.P. No. 9862 of 2012, Mr. M. Kamalanathan in W.P. No. 7222 of 2012, for the Appellant; P.H. Aravind Pandian for Tamil Nadu Electricity Board in all the writ petitions A.A.G. assisted by Mr. R. Vijaya Kumar, Additional Government Pleader and Mr. G. Vasudevan, Mr. P. Gunaraj, S.K. Rameshwar and Mr. M. Varunkumar, for the Respondent

Judgement

V. Dhanapalan, J.—Heard Mr. N.L. Rajah, learned counsel appearing for Mr. R.S. Pandiyaraj, Mr. S. Sivanandam and Mr. K. Seshadri in

W.P. Nos: 31219, 32748 and 32749 of 2012; Mr. S. Sairaman, learned counsel appearing in W.P. No. 9862 of 2012 and Mr. M.

Kamalanathan, learned counsel appearing in W.P. No. 7222 of 2012 and Mr. P.H. Aravind Pandian, learned Additional Advocate General

assisted by Mr. R. Vijaya Kumar learned Additional Government Pleader and Mr. G. Vasudevan, Mr. P. Gunaraj, Mr. S.K. Rameshwar and Mr.

M. Varunkumar learned counsel appearing for the respondent/Tamil Nadu Electricity Board in all the writ petitions. In all these writ petitions what

is challenged is the bills of January, 2012 to December 2012 regarding the respective service connection of the petitioners in so far as it related to

excess charges in Clause 13(f) of the Bill for exceeding the limits and seeking to quash the same as illegal, arbitrary, without authority of law and

for a consequential direction to the 5th respondent to forbear from taking energy adjusted instead of energy available to the credit of petitioners for

the purpose of equivalent demand quota calculation during subsequent period till the load shedding is in force during normal and peak hour.

2. The petitioners are companies running spinning mills and other units and they had the HT service connection in their respective mills / units. It is

their claim that the respondents should supply energy for 24 hours based on quota fixation including evening peak hours, and that they stop supply

by load shedding often. Unless the petitioners do engage running factory at 92% of utilization of capacity, breakeven point may not be reached. To

avoid heavy loss, petitioners made arrangements for running the mill during normal hours and evening peak hours 6 to 10.00 p.m. by transmitting

power generation through their wind mills which they are operating independently. Some of them purchase power from third parties. It is submitted

that the respondents have power to regulate power supply during normal and evening peak hours and they are entitled to levy excess charges as

per norms approved by the Tamil Nadu Electricity Regulatory Commission, hereinafter referred to as T.N.E.R.C. As per the quota available to the

petitioners they are entitled for uninterrupted power supply from the respondents. As there was load shedding often around 8 to 10 hours per day

petitioners are facing much problems. Therefore, they challenge clause 13(f) of the bill of the respective months on the ground that levy of excess

charges for exceeding the limits during the peak hours, by load shedding around two hours out of four hours thereby not permitting the petitioners

to utilize their energy and demand available from other sources such as windmill, etc. is contract to law and when the petitioners are entitled to

transmit their own power utilizing the transmission lines of the respondents. It is also stated that during the period other than evening peak hours

also there was load shedding which is illegal. According to the petitioners the load shedding resulting in extra levy is unauthorized and not taking note of approval of transmission of power from other sources is arbitrary and unreasonable. Since the petitioners have availed transmission facility

of power, there cannot be any extra charges for exceeding quota. Hence, according to the petitioners, the load shedding which affects

manufacturing at mills is violative of Articles 14 and 19 (1)(g) of the Constitution of India.

3. The Chief Financial Controller/Revenue, TANGEDCO, has filed a counter affidavit on behalf of the respondents, and inter alia stating that due

to increase in demand of power and shortage in generation, the Government of Tamil Nadu has implemented Restriction and Control measures on

the usage of electricity to all Industrial consumers in the State. Based on the order of the Government, a notice dated 01.11.2008 was

communicated to all HT consumers containing instructions for Power cut. The Tamil Nadu Electricity Regulatory Commission was also pleased to

approve the Restriction & Control measures issued in this regard. In the said order it has been clearly mentioned that the quota for the use of

power will be fixed based on the consumption of the consumer for the period from October 2007 to October 2008. The highest consecutive three

months average energy consumption during the aforesaid period will be arrived as Base Energy and 40% cut on energy has been imposed. The

remaining 60% has been fixed as Energy Quota. The base demand has been arrived as the maximum recorded demand in the HT service during

the aforesaid period subject to the condition that if the maximum recorded demand exceeds sanctioned demand, the sanctioned demand is base

demand and 40% cut on the base demand has been imposed. The remaining 60% has been fixed as demand quota. However, during the peak

hours (18.00 hrs to 22.00 hrs), petitioners have been permitted 10% of the demand and energy quota plus transformer loss as a peak hour

demand and energy quota for lighting and security purposes only.

The aforesaid statement has been explained by the following illustration:

A) Fixation of quota for the normal consumers viz. who are not partially using power from CPP:-(Assumption 20% power cut)

(i) Fixing of demand quota:-

Base demand 1009.6 KVA

80% of the base demand (1009.6x80/100) 807.68 KVA

The demand quota 807.68 KVA

During the Evening Peak Hour (18.00 to

22.00hrs) quota fixed on 5% of the demand

quota fixed

Evening peak Hr demand quota (807.68x5/100)40.384 KVA

(ii). Fixing of energy quota:-

Base Energy 638123 units

80% of the base energy (638123x80/100) 510498 Units

The Energy quota 510498 Units

During the Evening Peak Hour (18.00 to

22.00hrs) quota fixed on 5% of the energy quota

fixed

Evening peak Hr energy quota (510498x5/100) 25525 Units

while so, due to large number of representations received from various H.T. consumers having Captive Power plants requesting exemption from

power cut stating that they are unable to utilize the energy generated through their Captive Power Plants due to Restriction & Control measures,

the demand and energy quota for the H.T. consumers using power partially from their Captive Power Plants have been refixed as per Memo. No:

CE/Comml/EE/DSM/AEE/PMM/F. Powercut/D. 28/2008, Dated 17.11.2008. The Energy and Demand used by the HT consumers have been

compared with the Demand and Energy supplied by the generators based on the above monthly reading. The consumption of power by the HT

consumer at the user end from Board''s grid over and above the supply of power through their Captive Power Plants, will be charged at the rate

prescribed by the T.N.E.R.C. for the violation. In the above method, the consumer may use their full wheeled energy without any cut. However,

the H.T. consumers having Group Captive Power Plants have been permitted to use their wheeled energy only on slot to slot basis. The demand

and energy quota fixed and excess demand and energy charges levied for the HT consumers partially using power from CPP.

The illustration with working method as per the circular memo dated 17.11.2008 is as follows:-

Fixing of Energy Quota:-

(i) Monthly base energy consumption as 638123 Units A

illustrated working instructions dated 1.11.2008.

(ii) In that the actual energy supplied (monthly 250500 Units B

average) for the above three months average by

the CPP

(iii) The actual energy availed by consumer from387623 units C

TNEB (A-B)=C

(iv). 80% energy on C X80%C=D 310098 Units D

(v) The quota fixed for energy(B+D) 250500 +310098

Fixing of demand quota:-

i) The base demand consumption as illustrated in1009.6 KVA E

working instructions dated 01.11.2008

ii) In that the calculated demand supplied for the 366.23 KVA F

energy for the month by CPP

F= 250500 Units

30 X 24 X 0.95

iii). The actual demand availed by consumer (E-

F)

4. In the above order re-fixation of the demand and energy quota for the H.T. Consumers who are partially using power from CPP users only was

done and not for the wind Energy Captive users and as the demand and energy quota fixed for the CPP users have been considered after adjusting

the wheeled energy as per memo dt: 17.11.2008, the wind energy captive users have challenged the above order by way of filing Writ Petitions

vide W.P. Nos. 12448 etc. before this Court by praying to re-fix their demand and energy quota on par with the CPP users. Based on the orders

passed by this Court in W.P. No: 12448 of 2009 etc., the T.N.E.R.C. issued an order vide Suo-Motu Proceedings No. 1 of 2009 dt:

28.10.2009 regarding the fixation of quota for wind energy captive users on par with CPP users and the T.N.E.R.C. has recognized and approved

the formula contained in Board''s Memo dt: 17.11.2008 for refixing the demand

and energy quota for all captive users including wind energy users.

It is also submitted that the T.N.E.R.C. ordered that the quota to be fixed to all captive users including the wind energy captive users based on the

circular Memo, dt: 17.11.08 -First part for the period from 01.11.08 to 30.04.2009, Second part for the period from 01.05.09 to 31.10.09 and

Third Part for the period from 01.11.09 onwards. In respect of all three parts, the T.N.E.R.C. ordered that the demand and energy quota for the

wind energy supplied after 01.11.08 shall be fixed in accordance with the memo dated 17.11.2008 of TNEB and the demand quota & energy

quota shall be revised as per the order of T.N.E.R.C. vide its suo-motu Proceedings No: 1 of 2009 dated 28.10.2009 and the excess demand

charges and excess energy charges shall be computed based on the revised demand and energy quota for the period from 01.11.2008 onwards.

The T.N.E.R.C. has also ordered that from 01.11.2009 all captive users, whether thermal or wind shall declare on the first day of every month, the

energy proposed for captive use for the following month, which shall be considered as B and F for the purpose of fixing energy quota and demand

quota respectively in the formula of the T.N.E.B. dated 17.11.2008. The energy so declared shall roughly be the monthly average generation.

Further, from 01.11.2009, the peak hour power generation shall be eligible for peak hour utilization for every month subject to the limit of one-

twelfth of annual peak hour generation. In this connection the Superintending Engineer/CEDC/Metro/Coimbatore and the Superintending

Engineer/NEDC/Namkkal had requested clarification vide letter dt. 26.05.2010 which is as follows:-

The peak Hour Penalty in respect of HT services having wind mill adjustment is calculated as per TNERC Suo-Motu order dt. 28.10.2009 by

enhancing the quota taking in to account the wind mill units generated during the period from 12/2008 to 07/2009. The demand notices have been

issued to the consumers as per above.

Thereafter, a clarification has been issued by the 3rd respondent vide letter dated 25.06.2010 which is as follows:

I) In the Memo dt. 17.11.2008, it has been mentioned that (Fixing of energy quota)(i) Monthly base energy consumption as illustrated in working

instructions dt. 1.11.2008,

II) (ii) In that the actual energy supplied (monthly average) for the above 3 months average by the CPP.

III) In the above the actual energy supplied was meant only the actual energy adjusted.(If the supplied energy is more than the consumption, the

Excess energy would have been lapsed)

IV) In the case of wind energy, the energy supplied during a month will be adjusted against the Industrial consumption and the excess supplied

energy will be sent to the generation circle for banking.

V) The energy available in the banking will be drawn for adjustment at the time of off season of wind. At that time the equivalent Demand (Deemed

Demand) will be calculated and added in the quota.

VI) Therefore the Deemed demand will also be allowed only based on the actual units adjusted and not based on the energy supplied/injected into

the grid.

5. It is further stated in the counter that clause 5.22.4 of the Order No. 2 dated 15.5.2006 refers to the energy supplied at the Consumption point

only. The energy available for consumption is after adjustment of the line loss. In clause 8.7.4 of the Tamil Nadu Electricity Regulatory

Commissions Comprehensive Tariff Order on wind energy Order No. 1 of 2009 dated 20.3.2009 deals with demand charges. The example set

out in clause No. 8.7.4.3 reads as follows:-

Total Generated units consumed by the A

Consumer on open access divided by (30 X 24

X actual PF recorded during the billing month)

Recorded demand (or) 90% of sanctioned B

demand , whichever is higher

The demand supplied by the Licensee (B-A) C

The energy supplied is only the energy adjusted against the consumption exclusive of line loss even as per the above example. The equivalent

demand (deemed demand) as per the formula laid down by the Tamil Nadu Electricity Regulatory Commission can be allowed only for the energy

adjusted during that month. If there is any unadjusted surplus energy it will be sent to banking for adjustment in the subsequent months, whenever banked energy is drawn and adjusted against the TANGEDCODS power, the equivalent demand will be calculated for the banked energy as per

the formula.

6. Further, Section 9 (2) of the Electricity Act 2003 confers on the captive generator the right to open access for the purposes of carrying

Electricity from his captive plant to the destination of his use. Therefore, a wind energy generator shall be entitled to adjust the generated energy for

captive consumption. In the case of wind energy, if the full supplied energy is taken for deemed demand calculation, instead of the adjusted energy,

then the wind energy generator who is having the banking facility will enjoy two times the benefit of deemed demand. As per the Tamil Nadu

Electricity Regulatory Commission''s Order, for open access to wind energy and CPP power the demand calculation for wheeling of energy has to

be arrived based on the consumption at user end and not on the energy injected. Besides, as per the Electricity Act 2005 one-wind energy

generator and CPP can wheel the energy to various HT services and TANGENDCO raise bills for each HT service (user end) hence particular

wheeled service only to be taken for quota calculation. In case of wind energy, if full supplied energy is taken for deemed demand calculation,

instead of the adjusted energy, then the wind energy generator who is having the banking facility will enjoy double times the benefit of deemed

demand. In most of the occasions the supplied energy could not be consumed fully (adjusted) and the balance will be sent to banking. Since, the

Tamil Nadu Electricity Regulatory Commission has ordered for slot wise adjustment, always there is mismatch between generation and the

consumption from TANGEDCO grid, consequently there will be surplus energy in any one of the slot, for that surplus energy, equivalent demand

can be permitted only at the time of adjustment in the subsequent month bills as per the Commissions order. As such, TANGEDCO had issued the

circular memo dated 17.11.2008 so as to utilize the energy generated from CPP without any cut by the CPP users. 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 TNEB being the author of the formula dated 17.11.2008 and as it has been duly approved by the Tamil Nadu Electricity Regulatory Commission, the TNEB is rightly implementing the memo. By proper interpretation, the

word ''supplied'' used in the formula meant only the units adjusted i.e., units consumed by the user (HT consumer).

7. It is further submitted that based on the above facts, Tamil Nadu Electricity Regulatory Commission has ordered and upheld the clarification

letter dated 25.06.2010 issued by the 3rd respondent in order M.P. No. 32 dated 28.12.2011 and I.A. No. 1 of 2010 and M.P. No. 41 and I.A.

No. 1 of 2010. The relevant portion of the orders is reproduced as under:

14.6. At the time of introduction of power cut and issue of order by the Commission in MP No. 42 of 2008, the power brought in from CPP alone

was recognized. This matter was further examined by the Commission in Suo moto proceeding No. 1 of 2009 after a batch of writ petitions were

filed in the High Court of Madras wherein certain judgments were passed. Keeping these judgments in view, the Commission conducted Suo

Moto proceeding No. 1 of 2009 and issued an order on 28-10-2009. Relevant portions of the Order are extracted below:-

16. After taking into account the submissions made by both the parties, the Commission directs as follows:-

(1) The base energy consumption and base demand shall be computed for all captive users including the wind energy captive users on the basis of

the formula contained in the TNEB Memo No. CE/Comm/EE/DSM/AEE/PMM/F.Power Cut/D.001/08 dated 1-11-2008;

(2) The demand and energy quota for the wind energy supplied after 1-11 2008 shall be fixed in accordance with the memo dated 17-11-2008 of

TNEB;

(3) As already directed by the Commission, wind energy banked as on 1-11-2008 shall be adjusted in five equal monthly instalments between 1-

12-2008 and 30-4-2009 and equivalent additional demand and additional energy quota should be allotted to them;

(4) Demand quota and energy quota after being redrawn in accordance with the above directions shall be set off against the actual demand and

energy consumed between 1-11-2008 and 30-4-2009;

(5) Excess demand charges and excess energy charges for the period from 1-11-2008 to 30-4-2009 shall be computed with reference to the

redrawn demand and energy quota;

(6) For the period from 1-5-2009 to 31-10-2009, the formula for computation of energy quota and demand quota contained in the circular of

TNEB dated 17-11-2008 shall apply, that is, with effect from 1-5-2009 the petitioners are entitled to demand quota for current generation in

accordance with the formula of 17-11-2008; if the energy quota and demand quota during this period has been exceeded by the captive user, he

will be entitled to draw from the energy banked during this period to the extent of adjusting the excess demand and excess energy consumption;

(7) The excess demand charges and excess energy charges for the period from 1-5-2009 to 31-10-2009 shall be determined with reference to the

demand and energy quota calculated in accordance with para (6) above;

(8) For the future, from 1-11-2009 the base demand and base energy may continue to be fixed with reference to the formula laid down by TNEB

in their memo dated 1-11-2008;

(9) 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;

(10) The energy which remains in the bank of wind energy generators as on 1-11-2009 after adjustment in accordance with para (8) above, shall

be available for consumption of the wind energy captive user between 1-11-2009 and 31-3-2010 in five equal monthly instalments. In addition,

current generation would also be eligible for additional energy and additional demand quota; both current generation as well as the energy drawn

from the bank would count for computation of equivalent demand;

(11) From 1-11-2009, all captive users, whether thermal or wind, shall declare on the first day of every month, the energy proposed for captive

use for the following month, which shall be considered as B and F for the purpose of energy quota and demand quota respectively in terms of the

memo of TNEB dated 17-11-2008; the energy so declared shall roughly be the monthly average generation;

(12) From 1-11-2009, peak hour current generation as well as peak hour banked energy shall be eligible for peak hour utilization every month

subject to the limit of one-twelfth of annual peak hour generation;

8. From the above it can be seen that while conventional captive power plant generates power according to its need, there is no banking facility in

their case. In the case of wind generators, energy produced may not be consumed during the same period and becomes eligible for banking which

is either used during non wind season or encashed. Therefore, there is a difference between wind energy generated and wind energy consumed. It

is also a fact that wind energy capacities could be higher than the consumption of one single industry and therefore is shared by many industries.

Accordingly, wind energy generated is given credit in one circle and wind energy adjusted may be debited in many other circles. The residual wind

energy goes for banking in the wind energy generating circle in the name of the generator for either future use or for encashment purposes. It is

therefore necessary to distinguish between wind energy generated and wind energy adjusted including the banked wind energy drawn upon for

consumption in a subsequent month. The drawal of banked wind energy becomes eligible for calculation of quota. In view of this, it is necessary to

monitor the consumption of wind energy at consumption points besides metering at generation points. If the quota is fixed based on the wind

energy generation alone instead of wind energy at the consumption point and also taking into account the banked wind energy, the same will

amount to double benefit for the consumers. To this extent, the arguments of respondent TANGEDCO is correct. The Commission also referred

to the related provisions in the comprehensive tariff order on wind energy i.e. Order No. 1 of 2009 dated 20th March 2009.

9. Adjustment of generated energy is covered in para 8.8 of this tariff order. The relevant portion is extracted below:-

Section 9 (2) of the Electricity Act 2003 confers on the captive generator the right to open access for the purposes of carrying Electricity from his

captive plant to the destination of his use. Therefore, a wind energy generator shall be entitled to adjust the generated energy for captive

consumption whether as a LT or a HT consumer.

The same has also been explained in the calculation contained in para 8.7.4.3 of the same order. 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.

10. It is also stated that the examination of the methodology adopted in case of wind energy generators indicate that unutilized energy from 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 generators, redrawal 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 moto 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.

11. Further, it is stated in the counter affidavit that the averments made in the Writ Petition has already been elaborately argued before the

Commission in M.P. No. 42 and M.P. No. 32 of 2010 filed by the Indian wind Power Association and South Indian Spinning Mills Association respectively and the Commission has ordered on 28.12.2011 that the equivalent demand should be arrived based on the actual adjusted units only.

In continuation to the above, Indian wind Power Association and South Indian Spinning Mills Association has filed appeal petitions before the

APTEL and this matter is pending before the said Tribunal. Therefore, they prayed for dismissal of these writ petitions, since the matter is pending

before the Appellate Tribunal.

12. On the above background and pleadings I have heard the learned counsel appearing for the parties and perused the material documents made

available before this Court. During the course of arguments of these writ petitions, the learned Additional Advocate General has produced a copy

of the order dated 12th December, 2012 passed in Appeal No: 51 and 56 of 2012 by the Appellate Tribunal for Electricity. The learned

Additional Advocate General brought to the notice of this Court paragraphs 39 and 40 of that order, which reads as under:

39. 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 20.03.2009, 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''s 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 cannot 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.

13. The questions raised in these writ petitions are issues which were already adjudicated before the Appellate Tribunal for Electricity more

particularly in respect of excess charges for exceeding the limit during the peak hours; load shedding during peak hours which resulted in extra levy

as alleged to have been unauthorized and not taking note of the approval of the transmission of power from the source and not permitting the

petitioners to avail the transmission facility of power. It is also the specific stand of the petitioners that excess charges for the bills for the various

months is illegal and is liable to be set aside for the reason that it was done without giving an opportunity of hearing. It is also the contention of the

petitioners that for earlier months also petitioners were levied with evening peak hour penalty due to load shedding and they had paid without

knowing the legal consequences and that they are contemplating to take steps for getting refund of such penal levy. Therefore, these issues falling

under the relevant provisions of the Act has been seized of by the Electricity Regulatory Commission as well as the Appellate Tribunal for

Electricity which had rendered its findings, as referred to above, on 12.12.2012 with certain observations and modifications and remanded the

matter back to the Tamil Nadu Electricity Regulatory Commission to pass a consequential order within 30 days from the date of receipt of the

communication of the judgment. It is also materially pleaded by the respondents that the circumstances under which the memo dated 17.11.2008 came to be filed and thereafter, the steps taken by them before the Tamil Nadu Electricity Regulatory Commission as per the orders of this Court

made in W.P. No: 12448 of 2009 and thereafter, orders have been passed by the T.N.E.R.C. on 28.11.2008, which came to be modified on

28.10.2009. As to what is the date of effect of the order are all matters of concern before the Tamil Nadu Electricity Commission to look into in

view of the finding rendered by the Appellate Tribunal for Electricity.

14. In the light of the above stated position, the learned counsel for the parties would suggests that all these writ petitions may be disposed of by

giving a direction to the T.N.E.R.C. to conclude the proceedings as directed by the Appellate Tribunal within a time frame reserving the right of

every petitioner to adjudicate the matter before the Electricity Commission including the petitioners who are not before the State Commission as

well as the appellate Commission so far. Thus taking into consideration the above stated circumstances and looking into the grievance put forth by

the writ petitioners and the stand taken by the respondents that as per the orders of this Court, the State Commission has considered the claim

raised in the case of Indian wind Power Association and South Indian Spinning Mills Association in M.P. Nos: 42 and 32 of 2010 respectively and

the Commission, by its order dated 28.12.2011, has ordered that the equivalent demand should be arrived based on the actual adjusted units only,

and the subsequent fact that Indian wind Power Association and South Indian Spinning Mills Association has filed appeal petitions before the

Appellate Tribunal for Electricity and that the Appellate Tribunal has rendered its findings to the effect as stated supra, it would be appropriate to

direct the Tamil Nadu Regulatory Commission to adjudicate the matter as directed by the Appellate Tribunal in its order dated 12.12.2012 made

in Appeal Nos: 51 and 56 of 2012 within the time frame fixed by the appellate tribunal. It is made clear that petitioners are at liberty to adjudicate

all the issues and questions raised in these writ petitions before the Commission and the Commission shall look into the same by giving them an

opportunity of hearing. Similarly, it is needless to say that the Commission shall take into account all the relevant provisions of law and the

discussions and decision arrived at by the Appellate Tribunal in its order dated 12.12.2012. All the writ petitions stand disposed of accordingly.

Till such time the Commission takes a decision, the parties to this proceeding are directed to maintain status quo as on date. Connected

miscellaneous petitions are closed. There shall be no orders as to the costs.

