

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

Appeal No. 56 of 2022

Dated : 26.05.2022

**Present: Hon'ble Mr. Justice R. K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

IN THE MATTER OF:

- (1) Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
Rep.by Chief Financial Controller/
Deposits and Documentation
NPKRR, Maaligai,
144, Anna Salai,
Chennai – 600 002
- (2) The Superintending Engineer,
Tirunelveli EDC, TANGEDCO,
Sivathipatti Road,
Maharajanagar Post,
Tirunelveli – 627011.
- (3) The Superintending Engineer,
Tuticorin EDC,
TANGEDCO, 131 & 132,
Ettayapuram Road,
Tuticorin – 608002.
- (4) The Chairman,
TANGEDCO,
144, Anna Salai,
Chennai – 600002.

...APPELLANT

Versus

Arulmozhi Spinning Mills Pvt Ltd,
Through its Managing Director
Vilathikulam,
HT. 211/Tuticorin EDC,
Registered Office,
19-B Ethel Harvey Road,
Sattur – 626203

Viruthunagar District.

....RESPONDENT

Counsel for the Appellant (s) : Ms. Anusha Nagarajan
Mr. Rahul Ranjan

Counsel for the Respondent (s) : Mr. Kumar Mihir
Mr. S.P. Parthasavathy for R-1

J U D G M E N T

Per Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

1. The present Appeal has been filed by Tamil Nadu Generation and Distribution Corporation Limited (in short "Appellant" or "TANGEDCO") assailing the Order dated 22.09.2020 ("impugned order") passed by the Tamil Nadu Electricity Regulatory Commission (hereinafter called the "State Commission" or "TNERC") in Dispute Resolution Petition (DRP) No.67 of 2014 ("Petition") whereby the State Commission has rejected that the contention of the Appellant in regard to payment of Cross Subsidy Surcharge (CSS) for the adjusted units shall necessarily be made by the Respondent before the Appellant make payment for surplus energy available at the end of the year.
2. In the impugned order, the State Commission observed that the payment for the unutilized energy and collection of Cross Subsidy Surcharge are two different issues which cannot be interlinked.
3. The Appellant submitted that the present Appeal arises out of the impugned order directing the Appellant to pay for the unutilized banked energy at rate of 100% of the normal power purchase cost along with interest at rate of 1% per month without deciding the issues involved. Being aggrieved of the findings of State Commission, the Appellant filed the captioned appeal.
4. Appellant No. 1: M/s. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) is the public sector undertaking owned by the Government of Tamil Nadu and is vested with the functions of generation and distribution of electricity in the State of Tamil Nadu.

5. Appellant no. 2 to 4 are the functionaries of the Appellant no. 1.
6. Respondent: M/s. Arulmozhi Spinning Mills Pvt. Ltd. ("Respondent" or "ASMPL") is a Company involved in preparation and spinning of cotton fiber business having its registered office at Sattur, Viruthunagar District and is the sole respondent in this appeal.
7. The facts of appeal are noted in brief.
8. The Respondent owns a HT Industry at Tuticorin EDC and consumes energy generated from its Captive Power Plant (CPP), a generating plant with hundred percent ownership, in addition to self-consumption the surplus energy is banked with the Appellant, the distribution licensee.
9. It was submitted that the Respondent, owning the CPP: a wind energy based renewable CPP, entered into an Energy Wheeling Agreement ("Energy Wheeling Agreement") on 28.03.2009 with Tamil Nadu Electricity Board (predecessor of TANGEDCO) to wheel electricity for captive consumption at Tuticorin EDC from its wind energy generation plant.
10. The unutilized energy from the CPP is banked with the Appellant for which the Respondent is entitled for receiving electricity charges from the Appellant. Under the relevant provisions of tariff order, the Respondent vide invoice dated 31.03.2012, raised a claim amounting to Rs. 8,14,213 for the unutilized banked energy (at the rate of 100% of power purchase cost) along with interest at the rate of 1% per month from the respective due date to the date of payment, which in turn was not honored by the Appellant.
11. As submitted, the Respondent approached the CGRF (Consumer Grievance Redressal Forum) and the Ombudsman, however, no relief was provided to the

Respondent on the ground that for any dispute between the industry owning a CPP and the licensee may approach the Regulatory Commission.

12. The Respondent filed the Petition on 24.09.2019 before TNERC seeking directions to TANGEDCO to make payment of cash equivalent of the unutilized banked energy without insisting for 51% utilization of the generated units for captive consumption.

13. From the impugned order it is noted that the prayer of the Respondent in the said DRP 67 of 2014 is as under:

“Prayer in D.R.P. No.67 of 2014:-

The prayer of the petitioner in this D.R.P. No.67 of 2014 is to direct the respondent to make payment of cash equivalent to the unutilized banked energy without insisting for 51% utilisation of the generated units for captive consumption.”

14. The State Commission passed the impugned order with the following findings:

“8. Findings of the Commission:-

The petition has been filed to:

- (a) direct the respondent to make the payment of cash equivalent to the unutilized banked energy without insisting for 51% utilization of the generated units for captive consumption.*
- (b) direct the Respondent TANGEDCO to pay Rs.8,14,213/- towards the charges for unutilized banked units of 2,80,763 as on 31.3.2012 along with interest at 1% per month from the respective due date to the date of payment.*

- (c) *that consumption of 51% against the generation during the period 2011-2012 could not be achieved only due to the Restriction & Control measure, prolonged unscheduled power cuts and load shedding imposed by the Respondent.*

8.2. *The Commission is not inclined to accept the stand of the Respondent that the Cross Subsidy Surcharge for the adjusted units during the period in question is required to be collected necessarily before releasing of payment for surplus energy available at the end of the year. We are of the view that the payment for the unutilized energy and collection of Cross Subsidy Surcharge are two different issues which cannot be interlinked as they operate on different spheres. The payment for the unutilized banked energy purely arises out of supply of energy by a generator to a distribution licensee and it is governed by the relevant Tariff Order. However, the collection of Cross Subsidy Surcharge arises out of failure to adhere to the Electricity Rules, 2005 and stands on a different footing. Hence, we find that there is no reason to interlink these two issues. Insofar as the present petition is concerned, the grievance of the petitioner is that the payments have not been made for the unutilized energy and hence the issue cannot travel beyond the same and it has to confine itself to the fact whether payments have been made by the licensee or not. On perusal of the records, we find that no such payment has been made for unutilized banked energy and the same is withheld on account of the issue of Cross Subsidy Surcharge. We are to observe here that it is not appropriate to withhold the payment due on unutilized banked energy on such ground of non-payment of Cross Subsidy Surcharge. In such circumstances, we order that the payment for the unutilized banked energy in full as prayed for along with interest @ 1% per month to be*

released within 30 days time. With these observations and directions, the petition is allowed.”

15. The Appellant is aggrieved by the impugned order and submitted that the State Commission only examined the issue of non-payment of charges for the unutilized banked energy and ignored the other issues as raised by the Appellant. The other issues raised by the Appellant in the instant case are:

- (i) whether the Respondent was eligible for encashment of unutilized banked energy during FY 2011-12 at the rate of 100% of the relevant purchase tariff or normal power purchase cost, instead of rate of 75% of relevant purchase tariff or normal power purchase cost;
- (ii) whether the Respondent having lost Captive Generation Status (“CGP”) due to non-fulfilment of twin conditions under Rule 3 of the Electricity Rules, 2005, the Appellant is entitled to impose Cross Subsidy Surcharge (“CSS”).

16. From the examination of the documents submitted including the appeal paper book, replies, oral and written submissions, it is observed that the only issue which was brought before the State Commission for adjudication was payment for the unutilized banked energy without the pre-condition of release of cross subsidy surcharge at the specified tariff.

17. Therefore, the short issue is whether the two issues are interlinked and the CSS shall necessarily be paid by the Respondent before payment for the unutilized banked energy is made by the Appellant to the Respondent.

18. At this stage we are not inclined to adjudicate the issues which were not prayed before the State Commission and are also not covered by the impugned order. The status of the CPP to the extent whether it failed in compliance to the Electricity Rules, 2005 is beyond the scope of this appeal. The Appellant, if aggrieved, has liberty to agitate the same before the State Commission and in case not satisfied with the order passed, may approach the higher forum for resolution.

19. The argument of the Appellant that the banking charges are paid by the distribution licensee (TANGEDCO) to the generator (CPP) in this case, due to unutilized banked energy remained banked with the licensee after the end of the corresponding banking year under the provisions of the relevant Tariff Order, whereas, the Cross Subsidy Surcharge is levied on the CPP in case it fails to comply with the provisions of the Electricity Rules, 2005 resulting into failure to be categorized as CPP at the end of the year.

20. In our opinion, the two issues are different payment mechanisms for different subjects covered under the provisions of the Electricity Act, 2003 (Act) and there is no reason to interlink these two issues, the State Commission is right in holding that *“We are of the view that the payment for the unutilized energy and collection of Cross Subsidy Surcharge are two different issues which cannot be interlinked as they operate on different spheres.”*

21. In the light of the above we find no merit in the Appeal to the extent that the payment of Cross Subsidy Surcharge (CSS) for the adjusted units shall necessarily be made by the Respondent prior to the release of payment by the Appellant for banked energy remaining with the Appellant at the end of the year.

22. Further, in light of the findings of the State Commission recorded at para 8.1(c), the Appellant is granted liberty to file a separate petition before the State

Commission on the issue of captive consumption by the Respondent vis-à-vis determination of captive status.

ORDER

For foregoing reasons as stated supra, we are of the considered view that the appeal has no merit and is dismissed with the direction that the State Commission shall hear and decide the issue of captive consumption *inter alia* violation of captive status by the Respondent, if approached by the Appellant through a separate petition.

No order as to costs.

Pronounced in the Virtual Court on this 26th Day of May, 2022.

**(Sandesh Kumar Sharma)
Technical Member**

**(Justice R. K. Gauba)
Officiating Chairperson**

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj