



## **TAMIL NADU ELECTRICITY OMBUDSMAN**

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### **BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI**

**Present : Thiru. A. Dharmaraj, Electricity Ombudsman**

#### **Appeal Petition No. 22 of 2015**

M/s Pandian Chemicals Ltd.,  
No.17A, Vallabhai Road,  
Chokkikulam,  
Madurai – 625 002.

. . . . Appellant  
(Rep by Thiru. S. Sivakumar )

Vs

The Superintending Engineer,  
Tirunelveli Electricity Distribution Circle,  
TANGEDCO (formerly TNEB),  
Maharaja Nagar,  
Tirunelveli – 627 011.

. . . . . Respondent  
(Rep by Thiru. P. Balaji, Accounts Officer/  
Revenue)

**Date of hearing : 5-5-2015**

**Date of Order : 12- 5-2015**

The above Appeal Petition dt,16.2.2015 filed by M/s Pandian Chemicals Ltd., Madurai was registered as Appeal Petition No.22 of 2015. The above appeal petition came up for final hearing before the Electricity Ombudsman on 5-5-2015. Upon perusing the above Appeal Petition, the counter affidavit, and after hearing both sides, the Electricity Ombudsman passes the following order.

## ORDER

### **1. Prayer of the Appellant :**

The Appellant prayed to direct the Respondent to pay their bill amount of Rs.5,35,363/- with interest at 12% per annum amounting to Rs.97,333/- for non receipt of payment after 30 days from the date of their bill for sale of unadjusted banked units of 1,84,608 generated through their WHT SC No.2247 at Rs.2.90 per unit to TANGEDCO.

### **2. Brief History of the Case :**

2.1 M/s Pandian Chemicals is having a 750 KW Vestas Wind Turbine bearing WHTSC No.2247 at Surandai, Tirunelveli District. The Electricity generated in the above Wind turbine is banked and adjusted in HTSC No.122 of Cuddalore EDC.

2.2 The unadjusted Banked units of 1,84,608 for the period from 1.4.2012 to 31.3.2013 was sold to TANGEDCO and a bill for Rs.5,35,363/- was raised. But, no payment was made by the Respondent.

2.3 Hence, the Appellant filed a petition before the CGRF of Tirunelveli EDC on 5.1.2015 for payment of the above sum with interest at 12%. The CGRF of Tirunelveli EDC has dismissed the petition stating that the above grievance is between a licensee and generator and hence the forum has no jurisdiction to dispose of the above petition.

2.4 Aggrieved over the order of the CGRF, the Appellant filed this appeal petition before the Electricity Ombudsman.

### **3. Contentions of the Appellant :**

3.1 The complainant is having 750 KW Vestas Wind Turbine bearing WHTSC No.2247 at Surandai, Tirunelveli District.

3.2 The units generated from the above 750 KW Wind Turbine is banked and adjusted in Cuddalore EDC bearing HTSC No.122.

3.3 The complainant had sold unadjusted banked units 1,84,608 during 1.4.2012 to 31.3.2013 at Rs.2.75 per unit (wrongly mentioned as Rs. 2.75 per unit instead of Rs.2.90 per unit) amounting to Rs.5,35,363/- to TANGEDCO, Tirunelveli EDC and issued bill No.1/EB/PCL/2012-2013 dt.31.3.2013 along with advance stamped receipt vide letter dt.27.5.2013.

3.4 For the above sale, the complainant had received neither payment nor any reply from the respondent till date. This amounts to deficiency in service.

3.5 As per TNERC order dt.20.4.2011 upheld by Appellate Tribunal for Electricity vide order dt.17.4.2012, the complainant is entitled to claim interest @ 12% per annum for delayed payment and the complainant has sent bill No.04/EB/PCL/2014-15 to the Respondent vide letter No.1475 dt.1.1.2015 towards interest @ 12% for non receipt of payment after 30 days from the date of bill.

3.6 In their WHTSC No.2247 at Surandai (Tirunelveli EDC), the captive consumption during the period 2012-13 is 84.86% which fulfils the group captive power consumption norms.

#### 4. Contentions of the respondent :

4.1 A letter dated on 5.1.2015 addressed to the CGRF/Tirunelveli by M/s Pandian Chemicals Ltd and the petition was registered in CGRF as No.11/14-15.

4.2 In the petition they requested to issue direction to pay their bill amount and interest as directed by TNERC towards non receipt of payment from TANGEDCO, Tirunelveli EDC for the sale of unadjusted banked units generated by their wind turbines.

4.3 After careful consideration of the complainant grievance the following reply has been sent.

*“மின் நுகர்வோர் குறைதீர்க்கும் மன்ற ஒழுங்குமுறை விதி (2)(e)ல் “முறையீடு (complaint) என்பது*

*(i) உரிமம் பெற்றவரால் அளிக்கப்பட்ட மின்சார விநியோகத்தில் உள்ள குறைபாடு அல்லது குறைவு;*

*(ii) மின் இணைப்பு வழங்குவதில் உரிமம் பெற்றவர் செய்யும் நியாயமற்ற அல்லது கட்டுப்படுத்தப்பட்ட தொழில் பழக்கம்;*

*(iii) மின்சாரம் பயன்படுத்துதல் மற்றும் தொடர்புடைய பணிக்கு, ஆணையம் நிர்ணயித்த கட்டணத்தை விட அதிகமாய் கேட்பது;*

*(iv) தற்சமயம் நடைமுறையிலுள்ள சட்டங்களுக்கு எதிராக, பொது வாழ்க்கைக்கு பாதுகாப்பற்றதும் இடர் அளிக்கக்கூடியதுமான மின்சாரப்பணி”*

*மேலும், மின் நுகர்வோர் குறைதீர்க்கும் மன்ற ஒழுங்குமுறை விதி (2)(g)ல் “மின் நுகர்வோர்” என்பவர் உரிமம் பெற்றவரால் அல்லது அரசால் அல்லது இந்தச் சட்டம் அல்லது அந்தச் சமயத்தில் அமலிலுள்ள ஏதாகிலும் பிறச்சட்டம் மூலம் மின்சாரத்தை பொது மக்களுக்கு விநியோகம் செய்ய அமர்த்தப்பட்ட நபரால், சொந்த உபயோகத்திற்காக மின்சாரம் விநியோகிக்கப்பட்டவர். மேலும், எந்த நபரின் வீடு, மின் கருவிகளால் மின்சாரம் பெறுவதற்கு உரிமம் பெற்றவர் அல்லது அரசு அல்லது அனுமதிக்கப்பட்ட பிற நபர் ஆகியோரின் மின் அமைப்புகள் அத்தருணத்தில் இணைக்கப்பட்டுள்ளதோ, அவரும் “மின் நுகர்வோர்” என குறிப்பிடப்பட்டுள்ளது.*

*மேற்கண்ட இந்த இரண்டு விதிகளின்படி தங்களது கோரிக்கையானது மின்சாரம் உற்பத்தி செய்யப்பட்டு licenseeக்கு மின்சாரம் விற்ற வகையில் ஏற்பட்டுள்ளதாக கருதப்படும் குறைபாடு சம்பந்தமானது. எனவே, இம்மனு நுகர்வோர் குறைதீர்க்கும் மன்றத்தின் வரையறையில் வராததால் அதனை எடுத்துக் கொள்ள இயலாது.”*

4.4 In the above order copy it was clearly declared that the generator cannot be treated as a consumer by the licensee and the same has been delivered by Ombudsman in appeal petition No.10 of 2014 delivered on 21.4.2014.

**5. Hearing held by the Electricity Ombudsman**

5.1 To enable the Appellant and the respondent to put forth their views in person, a hearing was held before the Electricity Ombudsman on 5.5.2015.

5.2 Thiru. S. Sivakumar has represented the Appellant and put forth his arguments on behalf of the Appellant.

5.3 Thiru. P. Balaji, Accounts Officer, Revenue, Tirunelveli EDC has attended the hearing and put forth his arguments on behalf of the Respondent.

**6. Argument put forth by the Appellant's representative on the hearing date :**

6.1 Thiru. S. Sivakumar reiterated the arguments furnished in the appeal petition.

6.2 The Appellant's representative argued that they are utilizing the energy generated in the windmills in HTSC No.122 available at Cuddalore EDC and hence they are consumer only.

6.3 The payment due for sale of unutilised banked energy is not made till day by the Tirunelveli EDC. Hence, there is deficiency in service rendered by TANGEDCO and the grievance could be dealt by Electricity Ombudsman.

6.4 He argued that they have fulfilled the norms for captive generation as their captive consumption is 86.46% of the total generation.

6.5 He argued that they have submitted their bill on 27.5.2013. But no payment was not made till date.

6.6 He also cited orders of Ombudsman's Order in petition No. 4 of 2008 and argued that the Electricity Ombudsman has dealt similar cases previously.

**7. Argument putforth by the respondent's representative on the hearing date :**

7.1 Thiru. P. Balaji, Accounts Officer, Revenue, Tirunelveli EDC reiterated the contents of the counter.

7.2 He argued that the issue raised by the Appellant is payment for the unutilized banked energy to the wind generator along with interest. As the issue is between the wind generator and the licensee, the CGRF of Tirunelveli EDC has held that it cannot take up the issue in the Forum. He also argued that as the issue is between the license and a wind generator, the Electricity Ombudsman also cannot take up the issue.

7.3 The Accounts Officer informed that the payment is pending at Tirunelveli EDC as certain details such as wheeling charges, deduction towards T&D loses, deduction towards banking charges etc are yet to be received from the Cuddalore EDC and were also reminded on 28.1.2015. But, details are yet to be received. On receipt of details from the Cuddalore EDC, action will be taken at their end for making payment to the unutilized banked energy.

7.4 The Accounts Officer argued that as per the agreement entered between the Appellant and Superintending Engineer/Tirunelveli EDC, any dispute between the parties has to be adjudicated only by the Hon'ble Commission.

## **8. Findings of the Electricity Ombudsman**

8.1 I have heard the argument of both sides and on a careful consideration, I find the issue to be decided is whether the Electricity Ombudsman can entertain the above petition and issue order.

8.2 The Appellants representative argued that he is a HT service owner and hence he is a consumer. He further argued that being a consumer, the grievance raised by the him has to be redressed by CGRF and Electricity Ombudsman. He also argued that the energy generated in the wind mill is utilized in the Distribution Circle and payment is also being made by the Distribution Circle only and hence the Grievance could be taken up by the CGRF and Electricity Ombudsman.

8.3 The Respondent argued that the issue raised in the petition is payment for the unutilised banked energy. The issue is in between a generator and licensee and hence the issue cannot be dealt by CGRF and Electricity Ombudsman.

8.4 In this regard, I would like to refer the definition of complaints given in Regulation 2(f) of Regulation 2 for CGRF and Electricity Ombudsman. The relevant regulation is extracted below:

*“2.(f) complaint” means any grievance made by a complainant in writing on:-*  
*(i) defect or deficiency in electricity service provided by the licensee;*  
*(ii) unfair or restrictive trade practices of licensee in providing electricity services;*  
*(iii) Charging of a price in excess of the price fixed by the Commission for consumption of electricity and allied services;*  
*(iv) Electricity services which will be unsafe or hazardous to public life in contravention of the provisions of any law for the time being in force.”*

8.5 On a careful reading of the above, it is seen that complaint means defect or deficiency in electricity service provided by the licensee, unfair or restrictive trade

practice of licensee in providing electricity services, charging of price in excess of the price fixed by the Commission for consumption and allied services and electricity services which will be unsafe or hazardous to public life.

8.6 From the above definition of complaint it is noted that the complaint shall be related to the shortcomings in the electricity services provided by the licensee or charging of prices in excess of the price fixed by Commission or on the safety of the electricity services proposed.

8.7 In the case on hand, the Appellant has filed a petition to direct the respondent to make payment for the unutilised banked energy generated by the wind mill generator owned by him with interest at 12% for delay in making the payment within 30 days.

8.8 As the above complaint does not relate to any grievance in regard to the electricity service provided by the licensee but relates to making payment for the unutilised banked units generated by a wind generator, I am of the view that the above complaint does not fall within the purview of definition of complaint given in the Regulations for CGRF and Electricity Ombudsman.

8.9 With regard to the contention of the Appellant that he is a consumer and hence his grievance is to be addressed by the Electricity Ombudsman. It is to be noted that the Appellant is a consumer in respect of HTSC No.122 available at Cuddalore EDC and is a Generator in respect of WEG HT SC No.2247 coming under the jurisdiction of Superintending Engineer, Tirunelveli EDC. The complaint relates to payment for the unutilised banked energy generated and not utilised in respect of its WEG HT SC No.2247 only and not related to a grievance with

regard to the services provided by the licensee in respect of HTSC No.122 available at Cuddalore EDC.

8.10 As the issue is making payment for the unutilised banked energy of a wind generator, the issue is between a generator and the licensee. Hence, I am of the considered opinion that the above grievance could not be dealt by Electricity Ombudsman.

8.11 Further in this connection, the clause 5 & 11 of the Energy Wheeling Agreement – executed by the Appellant and TNEB in respect of WEG HTSC No.2247 is reproduced below :-

**“ 5. Banking :**

- a) *The Wind Energy Generator shall bank the energy generated in the wind mill and the banking period shall be one year from April to March.*
- b) *The unutilized portion of banked energy if any shall be purchased by the licensee at the rate of 75% of the normal purchase rate.*
- c) *The banking shall be done slot wise to enable unit-to-unit adjustment.”*

**11. Settlement of Dispute - Arbitration :**

*(1) If any dispute or difference of any kind whatsoever arises between the parties relating to this agreement, it shall, in the first instance, be settled amicably, by the parties, failing which either party may approach the Commission for the adjudication of such disputes under Section 86(1)(f) of the Electricity Act, 2003.”*

8.12 The said section 86(1)(f) referred above is reproduced below :

*“86. Functions of State Commission (I) the State Commission shall discharge the following functions, namely :-*

xxx xxx xxx  
xxxx xxx x xx

*(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration.*

xxx xxx xxx  
xxx xxx xxx”

8.13 In view of the said clause 11 of the Energy Wheeling Agreement, it is to be pointed out that the Appellant and the licensee are bound to approach the Hon’ble Commission for adjudication of their disputes.

8.14 The Appellant argued that similar issue was dealt by Electricity Ombudsman in petition No.4 of 2008. The prayer of the Appellant in the above said petition is refund of the wrongly held banking charges with interest. In order dt.5.8.2008 on the said petition No. 4 of 2008, the Electricity Ombudsman has advised the petitioner to file a petition before the Hon’ble TNERC only, stating that Electricity Ombudsman has no jurisdiction to entertain such prayer.

8.15 As the issue is making payment for the unutilized banked energy of a wind generator, the issue is between a generator and a licensee. Hence, I am of the considered opinion, that the above appeal could not be entertained by me.

## **9. Conclusion**

9.1 In view of my findings in para 8 above, the Electricity Ombudsman cannot entertain the above complaint for issue of any order and the petition is dismissed.

9.2 With the above findings the AP.No.22 of 2015 is finally disposed off by the Electricity Ombudsman. No cost.

**(A. Dharmaraj)**  
Electricity Ombudsman

To

1. M/s Pandian Chemicals Ltd.,  
17A, Vallabhai Road,  
Chokkikulam,  
Madurai – 625 002.

2. The Superintending Engineer,  
Tirunelveli Electricity Distribution Circle,  
TANGEDCO (formerly TNEB),  
Maharaja Nagar,  
Tirunelveli – 627 011.

3. The Chairman,  
(Superintending Engineer),  
Consumer Grievance Redressal Forum,  
Tirunelveli Electricity Distribution Circle,  
TANGEDCO (formerly TNEB),  
Maharaja Nagar, Tirunelveli – 627 011.

4. The Chairman & Managing Director,  
TANGEDCO,  
NPKR Malaigai,  
144, Anna Salai,  
Chennai – 600 002.

5. The Secretary  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmi pathy Salai  
Egmore,  
Chennai – 600 008.

6. The Assistant Director (Computer) - **FOR HOSTING IN THE TNEO WEBSITE PLEASE**  
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