



TAMIL NADU ELECTRICITY OMBUDSMAN

19- A, Rukmini Lakshmi pathy Salai, (Marshal Road), Egmore, Chennai – 600 008.

Phone : ++91-044-2841 1376 / 2841 1378/ 2841 1379 Fax : ++91-044-2841 1377

Email : tnerc@nic.in

Web site : www. tneo.gov.in

BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 87 of 2015

M/s Greenweiz Projects Limited,
Empire House,
No.214, Dr. D.N. Road,
Ent. A.K. Nayak Marg,
Fort. Mumbai 400 001.

..... Appellant

Vs

The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
TANGEDCO,
131-132, Ettayapuram Road,
Tuticorin – 628 001.

... Respondent

Appeal Petition No. 88 of 2015

M/s Tapi Energy Projects Limited,
No.26, Gobind Mahal,
86-B, Netaji Subhash Road,
Marine Drive,
Mumbai 400 002.

..... Appellant

Vs

The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
TANGEDCO,
131-132, Ettayapuram Road,
Tuticorin – 628 001.

. . . . Respondent

Appeal Petition No. 89 of 2015

M/s Mitra Fidelity Limited,
No.26, Gobind Mahal,
86-B, Netaji Subhash Road,
Marine Drive,
Mumbai 400 002.

. Appellant

Vs

The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
TANGEDCO,
131-132, Ettayapuram Road,
Tuticorin – 628 001.

. . . . Respondent

Date of hearing : 29.1.2016

Date of Order : 4.2.2016

The petitions dated 23.10.2015 filed by M/s. Greenweiz Projects Limited, Mumbai, M/s. Tapi Energy Projects Limited, Mumbai and M/s. Mitra Fidelity Limited, Mumbai were registered as Appeal Petition Nos. 87 of 2015, 88 of 2015 and 89 of 2015 respectively. As the subject matter of the above appeal petitions are similar, all the above petitions were taken up for hearing on 29.1.2016. On perusing the appeal petitions, counter affidavits and after hearing both sides, the following Common Order is passed by the Electricity Ombudsman.

COMMON ORDER

1. Prayer of the Petitioner:

The Appellant in all the above appeal petitions have prayed to direct the Superintending Engineer, Tuticorin EDC to effect payment for the wind power pumped into the grid during the period from 1st April 2013 to July 2013 by following the Tamil Nadu Electricity Regulatory Commission's Order.

2. Brief history of the case:

2.1. The Appellants are owning Wind Energy Generators with a capacity of 500 KW each at Kayathar which are coming under the jurisdiction of the Superintending Engineer / Tuticorin EDC. Their service connection numbers are as detailed below:-

- (i) M/s. Greenweiz Projects Ltd. HTSC WEG No. 62 & 63
- (ii) M/s. Tapi Energy Projects Ltd. HTSC WEG No.52
- (iii) M/s. Mitra Fidelity Ltd. HTSC WEG No.50, 58, 60 & 61

2.2. All the above Appellants have executed Energy Wheeling Agreement to wheel the energy to HTSC No. 1601 to Chennai EDC / North owned by M/s D.S.Metals Pvt. Ltd., Chennai.

2.3. Due to disconnection of the said HT service the wind energy was not adjusted in HTSC No.1601 of M/s. D.S.Metals Pvt. Ltd., Chennai from 5 / 2013 to 7 / 2013. The Appellants have requested payment for the unutilized wind energy pumped into the Grid.

- 2.4. They filed a petition before the CGRF of Tuticorin. The CGRF of Tuticorin EDC has issued its orders on 31.8.2015. Aggrieved over the orders of CGRF. the Appellants' have filed their appeal petition before the Electricity Ombudsman.

3. Orders of CGRF:

The relevant para of the CGRF Order dated 15.8.2015 in respect of M/s. Greenweiz Projects Ltd. is extracted below:-

'Based on the consumers statement and the TANGEDCO statement, the Forum hereby ordered the TANGEDCO officials to obtain clarifications from TANGEDCO Headquarters Chennai on the above matter immediately and communicate the same to the consumer and report the fact to the Forum.'

The CGRF of Tirunelveli EDC has issued similar orders on the other two petitions also.

4. Contentions of the Appellant furnished in the petition:

- 4.1. As the Appellants have advanced identical arguments in A.P.No.87 of 2015, A.P.No.88 of 2015 and A.P.No.89 of 2015, the arguments furnished in A.P.No.87 of 2015 alone is discussed for the purpose of this order.
- 4.2. The Forum has sought certain details from TANGEDCO Headquarters which is getting delayed inordinately. When the matter has been clearly decided by the TNERC in various cases, same analogy and direction can be easily applied and consumer grievance redressed early. Asking for unnecessary clarification delays the matter.
- 4.3. CGRF has not followed the TNERC order requiring TANGEDCO to purchase the unutilized wind energy at the end of the financial year 31st March.

5. Contentions of the Respondent furnished in the Counter Affidavit:

- 5.1. The arguments of the Respondent in AP No.87 of 2013 alone is discussed for the purpose of this order.
- 5.2. M/s. Ardhendhu Projects (P) Ltd. assigned with WEG.HTSC Nos. 62 and 63 having capacity 1 No. 500 KW each installed at SF.No.1046/2 and SF Nos.930 & 931 of Chelliayanallur Village near Kayathar in Tirunelveli District which was commissioned on 31.3.1998 and agreement was executed on 31.3.1998 to sell the energy generated to the Tamil Nadu Electricity Board.
- 5.3. M/s. Ardhendhu Projects (P) Ltd. WEG Nos. 62 & 63 have got approval to adjust the energy generated from their wind mill services to their sister concern M/s. D.S. Metals Pvt. Ltd. having HTSC No.1601 in Superintending Engineer / Chennai EDC (North) and permitted to sale the surplus energy to TNEB after adjustment and agreement executed on 15.10.1999. Subsequently, the above Wind Mill Generator has got approval to change the Company's title from M/s. Ardhendhu Projects (P) Ltd. to M/s. Ardhendhu Projects Ltd.
- 5.4. The above Wind Energy Generator WEG Nos.62 & 63 has got further approval to change the company name from M/s. Ardhendhu Projects Ltd to M/s. Greenweiz Projects Ltd. vide Lr. No. CE/NCES/EE/C/A1/F.Ardhendhu-Greenweiz/D.2434/2001 dated 30.3.2001 with effect from 28.4.2001 and also permitted to adjust the generated energy to their sister concern M /s. D.S. Metals Pvt. Ltd. HTSC No.1601 in SE / Chennai EDC (North) as per CE/NCES/ Chennai's approval in Lr.No.CE/NCES//EE/C/A3/F.Ardhendhu Pro./D.616/99 dated 27.9.1999 and got approval to bank the surplus energy after making

adjustment vide Lr. No. CE/NCES/EE/C/A3/F. Ardhendu Pro./D.1761/2000 dated 2.8.2000.

- 5.5. M/s. Greenweiz Projects Ltd. have subsequently got approval to sale the entire energy generated by their wind farm WEG.Nos.62 & 63 to TNEB at the rate of Rs.2.70 per unit vide CE/NCES/Chennai's Letter No.CE/NCES/EE/WPP/A1/F. Greenweiz Projects Limited-WF/D.599/2004 dated 10.8.2004 for which agreement was executed on 14.8.2004.
- 5.6. Approval was accorded vide CE/NCES/Chennai's Lr.No.CE/NCES/.EE/WPP/A.1/ F. Greenweiz Projects Ltd./D.796/2006 dated 9.8.2006 and revised agreement has been executed on 6.9.2006 by M/s. Greenweiz Project Ltd. to wheel the energy generated from their wind farm WEG.HTSC Nos. 62 & 63 to their sister concern M/s. D.S. Metals (P) Ltd. bearing HTSC No.1601 of Chennai EDC/North by permitting to bank the surplus energy if available after adjustment. Further the banking of power will be for one year commencing from 1st April to 31st March of next year. The unutilized banked energy at the end of banking period will be treated as lapsed.
- 5.7. The SE / Chennai EDC / North vide Lr.No.SE/CEDC/N/DFC/AAO/HT/A4/F.1601/ D.6062/2013 dated 30.9.2013 stated that M/s. D.S.Metals Pvt. Ltd. HTSC No.1601 was under disconnection from 30.4.2013 due to non-payment of current consumption charges for the month of March 2013. Further the wind energy units received from SE/Tuticorin EDC was adjusted in HTSC No.1601 upto April 2013. Therefore the wind energy received from May 2013 to July 2013 has not been adjusted in HTSC No.1601.

- 5.8. Based on the SE / Chennai EDC / North's Letter and M/s. Greenweiz Projects Ltd.'s representation dated 3.10.2013 to consider the unadjusted wind energy for the period from 5/2013 to 7/2013 owing to DC of the HTSC No.1601 may be treated as sale to Board and requested for payment accordingly. Clarification has been requested from the CE/NCES/Chennai vide this office Lr. No. SE/TEDC/AO/Rev/HTSEC/AS/F.WM/D.402/2013 dated 17.10.2013 and the consumer also directly submitted his request to the CE/NCES/Chennai. The CE/NCES/Chennai stated that as the unutilized banked energy at the end of banking period 31.3.2014 is treated as lapsed and the request for payment is not feasible of compliance vide his Lr.No.CE/NCES/SE/EE/WPP/AEE2/F.Greenweiz/D.1203/14 dated 12.11.2014 and Lr. No. CE/ NCES/ SE/ EE/ WPP/AEE2/F.Greenweiz /D.104/15 dated 29.1.2015.
- 5.9. The forum has ordered vide Proc.No.1163/SE/TEDC/PRO/AE/REC/2015 dated 31.8.2015 to obtain clarification from TANGEDCO's HQrs. on the above subject. Clarification has been sought to the CE/NCES/Chennai vide this office Lr.No. SE/TEDC/TTN/AO/Rev/WM/F.Karma/D.631/2015 dated 13.10.2015 & Lr. No.SE/TEDC/TTN/AO/Rev/AS/WM/F.Karma/D.631-1/2015 dated 13.11.2015 and awaiting for reply.

6. Hearing held by the Electricity Ombudsman:

- 6.1. To enable the Appellant and the Respondent to put forth their arguments in person, a hearing was held before the Electricity Ombudsman on 29.1.2016.
- 6.2. Thiru A.D.Thirumurthy has represented the Appellant and put forth his arguments.

6.3. Thiru K.V. Kumaresan, AAO and Thiru S. Arunprasath, Accounts Supervisor of Tuticorin EDC have attended the hearing on behalf of the Respondent and put forth their arguments.

7. Contentions of the Respondent furnished in the Counter Affidavit:

7.1. Thiru A.D. Thirumurthy reiterated the contents of the Appeal Petition.

7.2. He confirmed that the CGRF has not redressed the grievance of the Appeal Petition. The Forum only direct the TANGEDCO to sought some clarification from their headquarters and communicate the same to the petitioner. The Forum ought to have given an order based on the merits of the case.

7.3. He argued that Hon'ble TNERC's Order No.3 dated 15.5.2006 is binding the licensee. As per the above Tariff Order the unutilized banked energy are to be paid at 75% of the normal purchase rate.

7.4. He also argued that all agreements executed after 15.6.2006 shall be in line with the Hon'be Commission Order. As a revised agreement was entered on 6.9.2006 (i.e.) about 3 months from the date of Commission's order No.3 dated 15.6.2006 he argued that the agreement shall be in line with the Commission's Order.

7.5. Thiru A.D. Thirumurthy also argued that the generated units were pumped into the Grid and were utilized by the licensee. Hence, the licensee has to make payment for the energy consumed.

7.6. Thiru. A.D. Thirumurthi, argued that the condition that the unutilized Banked units at the end of banking period in a financial year will get lapsed is not available in the supplementary agreement.

- 7.7. He also argued that as it is a grievance of the HT service holder, the grievance could be dealt by the Consumer Forum and Electricity Ombudsman.
- 7.8. He also argued that the Hon'ble Commission in its earlier orders have disposed of similar petitions and hence argued his case also could be decided based on the earlier rulings of the Commission.

8. Arguments put forth by the Representative of the Respondent on the hearing date

- 8.1. Thiru Kumaresan, AAO of Tuticorin EDC reiterated the contents of the Counter Affidavit.
- 8.2. He informed that based on the directions of the CGRF of Tuticorin EDC, they have sought clarification from the headquarters and reply is yet to be received.
- 8.3. He further informed that their headquarters has already rejected the claim of the Appellants in letter dated 12.11.2014 and 29.1.2015 stating that the unutilized banked energy at the end of banking period 31.3.2014 is treated as lapsed as per the supplementary agreement.
- 8.4. They have also informed that as per the supplementary agreement, the conditions stipulated in the original agreement will hold good. Hence, the lapsing of units at the financial year end as stipulated in the original agreement will hold good eventhough it has not been incorporated in the supplementary agreement.

9. Findings of the Electricity Ombudsman:

- 9.1. I have heard the arguments of the Appellant and Respondent. On a careful consideration of the arguments, the issue to be decided is whether the Electricity Ombudsman can entertain the above petition and issue orders.
- 9.2. The Appellant argued that he has obtained HT services for the Wind Energy Generator, hence, he is a consumer. Therefore, the grievance raised by the HT consumer has to be redressed by the CGRF and Electricity Ombudsman.
- 9.3. 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.”*

- 9.4. 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 an electricity services which will be unsafe or hazardous to public life.
- 9.5. 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 price in excess of the price fixed by Commission or on the safety of the electricity services.

- 9.6. In the case on hand, the appellant has filed a petition to direct the respondent to make payment for the unadjusted wind energy generated and pumped into the grid from 04 / 13 to 07/13 by the wind mill generators owned by it.
- 9.7. 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 unadjusted 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 Regulation for CGRF and Electricity Ombudsman.
- 9.8. 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 complaint relates to payment for the unadjusted energy generated in respect of the Appellant's WEGs and not relates to any of the services provided by the licensee in respect of a HT service.
- 9.9. As the issue is making payment for the unadjusted banked energy of a wind generator, the issue is between a generator and the licensee and not between a consumer and a licensee. Hence, I am of the considered opinion that the above grievance could not be dealt by Electricity Ombudsman.
- 9.10. In this connection, it is to be noted that one of the functions of the Hon'ble Commission under Section 86(1) (f) is to adjudicate the dispute between the generating company and licensee. For the sake of easy reference, section 86(1)(f) is reproduced below:-

“86. Functions of State Commission

(1) The State Commission shall discharge the following functions, namely:-

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

9.11 Since the dispute as mentioned in the petition relates to non-payment of bills for the unutilised banked energy supplied by the generator to the distribution licensee for the energy generated and pumped into the Grid, it is a dispute between the licensee and a Generator company and hence the Hon'ble Commission has to be approached for adjudication.

10. Conclusion :

10.1. In view of my findings in para 9 above, the Electricity Ombudsman cannot entertain the above complaint for issue of any order.

10.2. With the above findings the AP.No.87 of 2015, 88 of 2015 & 89 of 2015 is finally disposed off by the Electricity Ombudsman. No cost.

(A. Dharmaraj)
Electricity Ombudsman

To

1) M/s Greenweiz Projects Limited,
Empire House,
No.214, Dr. D.N. Road,
Ent. A.K. Nayak Marg,
Fort. Mumbai 400 001.

2) M/s Tapi Energy Projects Limited,
No.26, Gobind Mahal,
86-B, Netaji Subhash Road,
Marine Drive,
Mumbai 400 002.

3) M/s Mitra Fidelity Limited,
No.26, Gobind Mahal,
86-B, Netaji Subhash Road,
Marine Drive,
Mumbai 400 002.

4) The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
TANGEDCO,
131-132, Ettayapuram Road,
Tuticorin – 628 001.

5) The Chairman & Managing Director,
TANGEDCO,
NPKR Maaligai,
144, Anna Salai,
Chennai – 600 002.

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

7) The Assistant Director (Computer) - **FOR HOSTING IN THE TNEO WEBSITE PLEASE**
Tamil Nadu Electricity Regulatory Commission,
No.19-A, Rukmini Lakshmi pathy Salai,
Egmore,
Chennai – 600 008.