



TAMIL NADU ELECTRICITY OMBUDSMAN

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Appeal Petition No.295 of 2011

M/s Karodaiya Tea Industries
Rep by its managing partner,
Mr.B.L.Anand,
Konavakorai (P.O)
The Nilgris

.... Appellant

Vs

- 1) The Chairman,
Consumer Grievance Redressal Forum,
Nilgris Electricity Distribution Circle,
Udhagamandalam.
- 2) The Assistant Engineer,
TANGEDCO(Formerly TNEB)
Aravenu,
Nilgris

.... Respondent

Appeal Petition No.296 of 2011

M/s Kannavarai Tea Industries,
Rep by its managing partner,
Mr.Anand

.... Appellant

Vs

- 1) The Chairman,
Consumer Grievance Redressal Forum,
Nilgris Electricity Distribution Circle,
Udhagamandalam.

1) The Assistant Engineer,
TANGEDCO(Formerly TNEB)
Aravenu,
Nilgris

.... Respondent

Dates of Hearing : 8.03.2012 and 18.04.2012

Date of Order : 6-7-2012

The above appeal petitions came up for hearing before the Electricity Ombudsman on 8.3.2012 & 18.4.2012. Upon perusing the above appeal petitions, counter affidavits and upon perusing the relevant records pertaining to this case filed in support thereof and having stood over for the consideration before the Electricity Ombudsman till this day, and as the issues in both the above petitions are same the Electricity Ombudsman passes the following Common Order.

Common Order

1) **Prayer of the Appellant :**

(a) **Prayer of the Appellant in Appeal petition No.295 of 2011:**

The appellant prayed to set aside the orders of Consumer Grievance Redressal Forum of Nilgris EDC dated 17-8-2011 in petition no.04/2010-11 dated 1-3-2011 and pass such further orders as deemed fit and proper in the circumstances of the case.

(b) **Prayer of the Appellant in Appeal petition No.296 of 2011:**

The Appellant prayed to set aside the orders of CGRF of Nilgris EDC dated 17-8-2011 in petition no.02/2010-11 dated 1-3-2011 and pass such further orders as deemed fit and proper in the circumstances of the case.

(c) **Common prayer of the Appellant :**

In both the above petitions, the Appellants are requesting for quashing the impugned orders of the Consumer Grievance Redressal Forum issued on 17-8-2011 against the respective petitions. In both the above petitions, the subject matter is same (i.e) to set aside the levy of excess demand charges for exceeding the sanctioned demand in the respective service connections and the only difference is the total amount levied as excess demand charges. As the subject matter is same in both the above appeal petitions both the petitions were taken together for hearing and issue of final orders.

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

A.P.295 of 2011

2.1 M/s Karodaiya Tea Industries is having a LTCT service connection bearing no.123. The connected load is 150 HP. Originally the above service was assessed under two part tariff and the same was assessed under IIIB category from 16.03.2003 as per the tariff order no. T.P.No.1/2002.

2.2 The petitioner's service was fitted with a electronic meter with KVA demand measuring facility from 16-03-2003 to 26-11-2004. Accordingly the demand in KW was arrived by multiplying the KVA by MF and PF. In the audit report dated 23-8-2007, it was pointed out that the demand in KW was calculated by adopting a power factor of 0.9 instead of the average power factor recorded for the respective month. Accordingly the Appellant was issued with a demand notice for a sum of Rs.4,54,082 as excess demand charges for exceeding the sanctioned demand of 112KW in 4/2003, 5/2003, 6/2003, 7/2003, 2/2004, 4/2004 and 7/2004.

2.3 The Appellant filed a writ petition W.P.No.23658/2005 in which interim stay was granted on condition that 50% of the demand charges is to be paid. Thereafter the appellant filed an appeal in W.A.No.1692/2005 in the High Court of Madras against the conditional order. The honourable division bench of High Court of Madras has directed the appellant to approach the concerned forum. Accordingly the appellant filed a petition to CGRF and the CGRF has considered the above petition of the appellant and passed its final orders to pay a sum of Rs.2,10,517 as penalty at the rate of 1.5% for the entire period. Aggrieved over the above orders, the appellant has filed this appeal petition before Electricity Ombudsman duly depositing the 25% of the impugned demand with the Superintending Engineer Nilgris EDC.

2.4 **A.P. No. 296 of 2011:**

The facts of this appeal petition also are same as above, except the service number is SC No. 5 and is owned by M/s Kannavarai Tea Industries. The amount of penalty levied by AE is Rs.2,53,378 which is reduced by to Rs.1,61,590 by CGRF in its order dated 17-08-2011.

3. **Contentions of the appellant:**

The appellant has contended the following in the appeal petition 295 of 2011.

- (i) The petitioner is a tea manufacturing industry situated at Kotagiri. The Petitioner is a consumer under the Tamil Nadu Electricity Board having LT CT service connection in S.C.No.123. The sanctioned load is 125 KVA and the connected load is 150 HP. The Petitioner states that originally the Petitioner was assessed under Two part Tariff. However, after the order of the Tamil Nadu Electricity Regulatory Commission in T.P.No.1 of 2002

filed by the Tamil Nadu Electricity Board, the Two Part Tariff has been merged with LTCT I i.e. III – B under Clause 9 of the Order of the Commission. Therefore from 16.3.2003 the Petitioner is assessed under L.T.C.T.III-B category.

- (ii) The Petitioner states that the Electricity Board changed the electronic meter during the year 2003. However the Petitioner meter was measuring only in KVA and not in KW. The Petitioner meter also measured the sanctioned demand in KVA till 7.4.2004. It is the duty of the Consumer not to exceed 112 KW at any point of time. Only from 7.4.2004 onwards the demand has been measured in terms of Kilowatt and the Petitioner is maintaining the consumption below 112 KW. Though Kilowatt Demand measuring meter was available with the Superintending Engineer through out, the same was not fixed in the Petitioner industry. Instead from 16.03.2003 till 7.4.2004 the demand was measured in KVA basis and it was converted into KW basis and the bills were raised accordingly by the Board. The Petitioner had paid the consumption charges till date without any default as per the bills raised by the Board.
- (iii) While so, the Assistant Engineer, Aravenu by his letter dated 2.11.2004 received by the Petitioner on 14.12.2004 started demanding Rs.4,54,082/- being the difference amount as the Petitioner exceeded the sanctioned demand. There were no details with respect to the demand. Hence the Petitioner by its letter dated 18.12.2004 informed the Superintending Engineer, Ooty that till 16.3.2003 the Petitioner was assessed under LT Two part Tariff with KVA meter. From 16.3.2003 the Petitioner was brought under LT Tariff scheme and the meter shown only KVA reading and the KW reading was achieved by calculating $KVA \times MF \times PF = KW$ and the Petitioner was maintaining power factor above 0.9 for which the Petitioner was also given incentive and the Petitioner was penalized for maintaining highest power factor by wrongly computing K.W. demand. Therefore the Petitioner is not liable to the penalty. However there was no reply from the Assistant Engineer. However the Assistant Engineer/

Aravenu on 24.3.2005 raised a similar demand without any calculation. Therefore the Petitioner again on 31.03.2005 called upon the Assistant Engineer to furnish the details. The Assistant Engineer furnished the calculations which are totally against law.

(iv) Therefore the Petitioner filed a Writ Petition before the Hon'ble High Court of Judicature at Madras namely W.P.No.23658 of 2005 challenging the demand for the penal charges. The Writ Petition was admitted and interim stay was granted on condition to pay 50% of the demand charges. Therefore the Petitioner filed an Appeal in W.A.No.1692 of 2005 challenging the conditional order. The Writ Appeal was admitted and interim stay was granted by the Hon'ble First Bench of the High Court of Madras.

(v) The above Writ Appeal was taken up and remanded to be filed before the Consumer Grievance Redressal Forum, Nilgris, Udhagamandalam. The Petitioner had filed the petition before the said Forum in P.No.04/2010-11 Dated 01.03.2011. The said forum on an erroneous view of law and fact had not considered the matter in proper perspective and by an order dated 17.08.2011 had dismissed the petition filed by the petitioner.

(vi) The petitioner states that according to clause 5(2) (iii) (B) of the Tamil Nadu Electricity Supply Code if the recorded demand has exceeded 112 KW in a particular month, the existing load sanction shall, after intimation to the consumer, be revised within one month of the second occurrence, to the level of 112 KW. Therefore it is evident that when the Assistant Engineer found that the petitioner allegedly exceeded 112 KW, he should have informed the fact to the petitioner immediately and adjusted the load to 112 KW which he failed to do so. The Assistant Engineer is not entitled to record the excess reading for subsequent months without revising the load after due notice to the Petitioner. Further it is the mistake of the Assistant Engineer in not recording the

proper reading for the month of April 2003 and subsequent adjustment. Hence if it all the Petitioner is liable for any penalty it is only for the month of April 2003. Therefore for the mistake of the licensee the consumer cannot be punished. This proposition of mistake on the part of the Board has been settled by the Hon'ble High Court at Madras as early as in the year 2001. In the instant case neither the Assistant Engineer nor the Superintending Engineer had intimated to the consumer regarding the excess demand for the first month (i.e. 4/2003). Therefore the demand for the entire period from 4/2003 to 7/2004 is not sustainable.

(vii) If the error committed by the Board in the calculation and conversion of KVA into KW for the month of April 2003 had been found in May 2003, the error/mistake could be averted for the month of May 2003 itself. Therefore for the mistake of the Board the Consumer cannot be punished.

(viii) The Consumer Grievance Redressal Forum failed to note that if it all the Petitioner is liable for any alleged error in calculation it is only liable for the month of April 2003 in view of clause 5(2) (iii) (B) of the Tamil Nadu Electricity Supply Code and not for subsequent months.

3.2 The Appellant in Appeal Petition No.296 of 2011 has also contended the same arguments advanced in A.P. No, 295 of 2011 except the amount levied as Rs.2,53,378/- and the LTCT service connection No. is 5. Hence, the above details are not reproduced here to avoid duplication.

4. Contentions of the Respondent:

4.1 The respondent has contended the following in his counter affidavit filed against A.P.No.295 of 2011.

- (i) In order dated 16.03.2003, the Low Tension Two part Tariff has been merged with LTCT tariff IIB service with a sanctioned demand of 112 KW and a new Service Connection number was assigned as 123 in the Batalada distribution of Aravenu section with effect from 16.03.2003.
- (ii) Due to non availability of static meter with provision of KW demand at the time of TNERC order dated 16.03.2003 the existing KVA demand meter which recorded KVA demand was used to calculate KW demand as per the formula $KW \text{ demand} = KVA \text{ demand} \times \text{multiplying factor (MF)} \times \text{average power factor}$ recorded by the Meter until replacement of the existing meter on 26.11.2004. The Terms and Conditions of Supply of Electricity vide clause 2.01 (VII)(b) and 2.01 (XII)(b) clearly deals with the subject. The respondent adopted 0.90 as power factor by oversight instead of adopting average power factor recorded by the meter for arriving KW demand for the period from 16.03.2003 to 26.11.2004.
- (iii) The error in the billing noticed by the Audit on 23.08.2004 for non adoption of correct average power factor while converting KVA demand into KW demand for the period from 16.03.2003 to 26.11.2004 was rectified and the bill was revised the demand by adopting the correct average power factor recorded by the meter for converting KVA demand was made into KW demand. The excess demand over and above the sanctioned demand had attracted penal charges and the respondent revised the bill accordingly which comes to Rs.4,54,082/- as per the clause 5(2)(ii)(C) (II) of Tamil Nadu Electricity Supply Code.
- (iv) Thereafter a demand notice was served to the petitioner on 02.04.2005 with working details for short levy. The petitioner was maintaining average power factor between 0.90 to 0.99 during the period from 16.03.2003 to 26.11.2004. The levy of shortfall

assessed by the audit authority is legitimate and sustainable and as such the petitioner is liable to pay the difference.

- (v) The petitioner had executed LT power load agreement on condition that if any wrong billing is noticed on later date, the licensee will have the right to collect the short fall amount. The petitioner has failed to prove the installation of demand control meter during the billing revision period. The petitioner had reported that demand controller was not working due to fuse blown out in the demand controller, hence the demand had exceeded. The performance of the demand controller has to be looked after by the petitioner.
- (vi) The petitioner filed petitions before the courts only to protract the payments to the respondent. The petitioner filed a frivolous petition OS No.64 of 2005 on the file of the Sub-ordinate Judge, Nilgris, Ooty and the respondent have also filed the written statement and interalia contended that the suit is not maintainable and subsequently after contesting the suit by the respondent, the suit was dismissed on 24.06.2005 and the court has directed the petitioner to represent before the appropriate forum in regard to the subject matter. The petitioner without approaching the forum again filed the writ petition in W.P.No.23658 of 2005 before the Honourable High Court, Madras to avoid the payment of short fall assessed by the Audit. The Honorable High Court passed the following order on 22.07.2005.

“Interim stay on condition the petitioner pays 50% of the amount demanded in each case within a period of six weeks from the date of receipt of copy of this order, failing which stay granted stands vacated without any further reference to this court notice”.

- (vii) But the petitioner without paying the 50% of the Audit short fall amount again had filed a writ appeal in W.A.No.1692 of 2005 on 25.08.2005 before the Hon'ble High Court, Madras and the Hon'ble

Division Bench of High court of Madras has passed the following order dated 18.01.2011.

“In view of the above, the writ appeal in W.A.No.1692 of 2005 and the writ petition in W.P.No.23658 of 2005 are dismissed. However, liberty is given to the writ petitioner to agitate the quantum of short levy before the appropriate forum by filing a petition within a period of six weeks from to-day. There shall be no order as to costs”

- (viii) Based on the order of the Hon'ble High Court, the petitioner had filed a petition before the Consumer Grievance Redressal Forum in P.No.04/2010-101 dated 01.03.2011 and the said forum had dismissed the petition filed by the petitioner vide order dated 17.08.2011 and had given a judgment to pay the sum of Rs.2,10,517/- as penalty at the rate of 1.5% for every KW or part thereof for the period from 16.03.2003 to 26.11.2004 within 30 days from the date of receipt of order. But the petitioner had paid 25% of the amount Rs.52,629/- and filed appeal petition date 14.09.2011 before the Electricity Ombudsman, Chennai.
- (ix) The petitioner is well aware of the excess demand as he has reached 131 KVA during 06/2003 itself and paid the penalty for excess demand. And the same was brought to the notice of the petitioner in the bill for the month of June 2003 and the petitioner once again reached the demand by 129 KVA during the month of 02/2004 and paid penal charges. The excess demand was informed to the petitioner in the bills for the respective months and also for any wrong billing noticed on later date, the licensee will have the right to collect the short fall amount which is clearly dealt in clause 12(1) of Tamil Nadu Electricity Supply Code.
- (x) The petitioner had exceeded the sanctioned demand of 112KW as per the audit report dated 23.08.2004, viz 04/2003-10 KW, 5/2003 – 10KW, 06/2003 - 31KW, 07/2003 – 22KW 2/2004 – 26KW,

04/2004 – 8KW and 07/2004 – 4KW. Clause 5(2)(ii) (c) (II) of the Tamil Nadu supply code states that where the recorded demand exceeds 112KW for every KW or part thereof in excess of sanctioned demand for the first two occurrences @ the rate of 1.5% of the charges for electricity supplied for every KW or part thereof over and above 112 KW and thereafter that is the third and subsequent occurrences at the rate of 3.0% for every KW or part thereof over and above 112 KW. The penalty as per the audit slip works out to Rs.4,54,082.

- (xi) The petitioner is not penalized for maintaining maximum power factor because when better power factor is maintained then the drawing current would be proportionately less resulting in lesser recorded demand. Incentives were given and enjoyed by the petitioner for maintaining better average power factor.
- (xii) The ruling submitted by the petitioner regarding dismissal of the petition in AIR 2001 madras page 117 at para 14 is not applicable in this case. The question of limitation does not arise as the petitioner had exceeded the demand during 2003 and 2004 in which the respondent had given a notice dated 02.12.2004 which is within the period of 2 years. Hence the claim made by the respondent is within the time as stipulated under Electricity Act.
- (xiii) The Consumer Grievance Redressal Forum / Udhagamandalam taking into account that the excess demand was calculated wrongly due to inadvertence and oversight, has arrived the penalty to 1.5% for the period of April 2003 to July 2003, February 2004, April 2004 and July 2004 instead of 3% for every KW or part there of over and above 112KW, for the 3rd and subsequent times exceeding the demand, as per clause 5(2) (ii) (c) (II) of Tamil Nadu Electricity Supply Code.

4.2 As the respondent has stated the same except the figures and reference details in respect of AP 296 of 2011, those details are not furnished.

5. Hearing held by the Electricity Ombudsman :

To enable the appellant and the respondent to put forth their views and arguments in person, hearings were held on 8.03.2012 and 18.04.2012.

6. Argument of the Appellant:

6.1 The appellant was represented by Thiru.M.Kamalanathan, Advocate on both the days of hearing. The learned counsel reiterated the contents of the appeal petition.

6.2 The learned counsel has argued that the error in billing is not applicable in the case as the reading was taken by the section officer who is a technically qualified person. The KVA demand reading taken has to be multiplied by the PF to arrive at the demand in KW. Adoption of wrong power factor is the mistake of the licensee and the appellant shall not be punished for the mistake of the licensee.

6.3 He also argued that as per clause 5(2)(iii) (B) of the Supply Code, in case if the recorded demand has exceeded 112KW, the existing load sanction has to be raised to the level of 112KW within one month of the second occurrence of exceeding demand beyond 112KW after due information to the consumer. Necessary charges for enhancing the load to the level of 112KW has to be added in the next bill. However, if the recorded demand has exceeded the 112KW for the third or more number of times, it is open to the consumer to opt for HT service. But no notice was given to the appellant. Hence, he argued that the excess demand charges can be charged to the appellant only for two occurrences and not more. Further, he also argued that the respondent has charged excess

demand charges during 6/2003 and 2/2004. Hence they are aware of the Code Provisions but failed to implement them.

6.4 He also argued that as the demand notice for excess demand charges for exceeding the sanctioned demand was issued during 2005, the Supply Code is applicable and terms and conditions of the board are not applicable.

6.5 On 18.04.2012, he furnished a copy of AIR 2001 Madras 117, and argued that Hon'ble High Court of Madras in the case S.A. Ahamed Vs Tamil Nadu Electricity Board, held that the board cannot be allowed to take advantage of their own mistakes and hence the appellant cannot be penalized for the mistake of the respondent.

7. Argument of the Respondent:

7.1 The respondent was represented by Thiru.K.Sekar, AEE/Town, Kothagiri and D.Karthikeyan, AE/Aravenu on 8.3.2012 hearing and represented by Thiru K. Sekar AEE/Town /Kothagiri & Thiru. J. Mathan, AE/Aravenu,i/c on 18-4-2012.

7.2 On 8.03.2012, the AEE/ Town Kothagiri has reiterated the contents of the appeal petition. He argued that as per clause 12 of the Supply Code, the licensee has right to demand additional amount in case of any error or mistakes. In the present case, the pf was wrongly adopted as 0.9 instead of the average power factor of the respective month. He also informed that as the above shortfall amount was levied based on audit remarks, CGRF has arrived at the excess demand charges by calculating the 1.5% of the total energy consumed in the respective months for every KW or part thereof over and above 112KW instead of 3% for every KW or part there of over and above 112KW for the 3rd and subsequent occurrences. Hence, he argued that the amount levied is reasonable. He also informed that the Terms and Conditions of Supply of the

erstwhile TNEB are applicable as the period falls before the publication of Supply Code.

7.3 On 18.04.2012, he gave a written argument wherein he stated that for the entire period BPSC has to be levied. He has also argued that the consumer is aware of the number of times he has exceeded the sanctioned demand since it was indicated in the monthly demand in the respective months. Hence, he has to pay the excess demand charges at 1.5% for the first two occurrences and 3% for the third and above occurrences.

8. Issues for Consideration:

I have heard both sides and perused the documents furnished by both the parties. On a careful consideration of rival submissions and perusal of documents. I find the following are the issues.

1. Whether the Terms and Conditions of Supply of erstwhile TNEB or Supply Code prescribed by Hon'ble TNERC is applicable?
2. Whether adoption of 0.9 as power factor instead of the average power factor could be considered as billing error ?
3. As the excess demand charge for exceeding the sanctioned demand is levied at a later date and at the same time for 7 months whether it can be treated as single occurrence or the excess in each month has to be treated as a separate occurrence ?

9. Findings on First Issue:

9.1 It is noted that the Appellant of both AP 295/2011 and AP 296/2011 has exceeded the sanctioned demand during 4/2003, 5/2003, 6/2003, 7/2003, 2/2004, 4/2004 & 7/2004 and the appellant of A.P. No. 296 /2011 has exceeded the demand in 4/2003, 9/2003, 11/2003, 4/2003, 5/2003 and 7/2003.

9.2 The Supply Code was published on 21-7-2004 and has come into force on the date of publication (i.e) on 21-7-2004. Hence, all the above periods except 7/2004 fall before the issue of Supply Code and as the bill for 7/2004 assessment was issued after 21-7-2004, the assessment for 07/2004 alone comes under the Supply Code period. As the electricity was consumed and billed before publishing the Supply Code, the excess demand charges for exceeding the sanctioned demand in respect of 4/2003, 5/2003, 6/2003,7/2003, 9/2003, 2/2004, 4/2004 & 5/2004 the Terms and Conditions of Supply of erstwhile TNEB are applicable and for the month of 7/2004, the Supply Code is applicable.

9.3 The relevant clauses 22.08 (a)& (b) of Terms and Conditions of Supply of TNEB are furnished below:-

“22.08 (a) In case of Low tension Current Transformer service with electronic meter, the maximum KW sanction shall be 112 KW including the lighting load. Whenever the M.D. is exceeded by the consumer, penalty should be levied as below.

(a) In case actual recorded demand is upto 112 KW, for every KW excess or part there of over the sanctioned demand, penalty of 1% of the total energy charges alone should be levied for every occurrence from the date of installation of electronic energy meter.

In case of actual demand exceeding the sanctioned KW demand for the second and subsequent times and if such exceeded demand is not more than 112KW, then the existing load sanction of such LT CT services should be revised with in one month to the level of exceeding the already sanctioned demand and all the necessary charges applicable for additional load to be included in the next bill after intimation to the consumer.

(b) In case of actual recorded demand exceeding 112 KW for every KW excess or part thereof over the sanctioned demand, the penalty should be levied at 1.5% over and above 112 KW and at 1% upto 112 KW for the first and second occurrence from the date of installation of electronic energy meter. For the third and subsequent occurrences of

exceeding 112 KW, the penalty should be levied at 3% for every KW or part thereof over and above 112KW.

In case where the exceeded demand is more than 112 KW for the second time, the existing load sanction of such LT CT services should be revised within one month to the level of 112 KW (Maximum limit) and necessary charges applicable for additional load to be included in the next bill after intimation to the consumer. In such case where the exceeded demand is more than 112 KW and occurs for the third and subsequent time, the penalty of 3% of total energy charges should be levied for every KW or part thereof in excess of 112 KW till the date of availing HT service by the consumer.”

9.4 The relevant regulation 5(2)(ii)(c) of Supply Code is furnished below :

“(c) For the remaining LT services other than those service connections covered in (a) and (b) above, when the contracted demand is in excess of 18.6KW (25HP) and for such of those consumers whose contracted demand is less than 18.6 KW (25HP) but opted for having meters with demand recording facility, the excess demand charges shall be -,

(I) Where the recorded demand does not exceed 112 KW, for every KW or part thereof in excess of the sanctioned demand, at the rate of 1% of the total energy charges;

(II) where the recorded demand exceeds 112KW, for every KW or part thereof in excess of sanctioned demand:-

- for the first two occurrences, at the rate of 1% of the charges for electricity supplied up to 112 kW;

- and 1.5% for every KW or part thereof over and above 112KW,

- and thereafter, that is, the third and subsequent occurrences at the rate of three percent for every KW or part thereof over and above 112KW.

(III) Where the recorded demand exceeds the sanctioned demand for the second and subsequent times ,-

(A) In case the recorded demand has not exceeded 112 KW, the existing load sanction shall, after intimation to

the consumer, be revised within one month of the second occurrence to the level of recorded demand and all the relevant

charges applicable to the additional load shall be included in the next bill;

(B) In case the recorded demand has exceeded 112 KW,, the existing load sanction shall, after intimation to the consumer, be revised within one month of the second occurrence, to the level of 112 KW and all relevant charges applicable to the additional load shall be included in the next bill; if, however, the recorded demand has exceeded 112 KW for the third or more number of times, it is open to the consumer to opt for HT service.

(iii) In the case of temporary supply, the excess demand charges shall be the difference between the minimum charges for temporary supply computed at the rate notified, for a back period of six months or date of supply whichever is lesser, and the corresponding current consumption charges already recovered from the consumer.

(iv) No addition or reduction of load in case of LT service and no addition or reduction of demand in case of HT service, may be sanctioned unless the outstanding dues in the same service connection had been paid.”

9.5 In the instant case, the Appellant's Sanctioned load is 112 KW in both the appeal petitions 295/11 & 296/11. Hence, exceeding the sanctioned load means exceeding 112KW only. Hence, issuing of notice to the Appellant that his sanctioned load has been revised to 112 KW within a month of second occurrence as contended by the Appellant does not arise.

9.6 On a careful reading of the Terms and Conditions of Supply of TNEB and Supply Code, it is noted that the consumer is liable to be charged at 1.5% of the total energy supplied for every KW or part thereof of the exceeded demand over & above 112KW and the percentage is increased to 3% for the third and subsequent occurrences . In the Terms and Conditions of Supply of TNEB it has been mentioned that the above will be charged till the date of availing HT

Supply whereas in Supply Code it has been mentioned as “it is open to the consumer to opt for HT service”. Hence, in the present case the rules governing, the excess demand charge for exceeding the sanctioned demand of 112 KW is same irrespective of whether the period falls during the operation of the Terms and Conditions of Supply of TNEB or the operation of Supply Code.

10. Findings on the second issue:

10.1 The respondent argued that to arrive at a demand in KW, the KVA reading has to be multiplied by the power factor. In the case on hand power factor was wrongly taken as 0.9 instead of the average power factor of the respective month.

10.2 The appellant argued that readings were taken by the AE. As the reading was taken by the technically qualified person the adoption of power factor as 0.9 cannot be considered as billing error. It is a mistake on the part of the licensee, hence the consumer shall not be penalized for the mistake of the licensee quoting the judgement of the Hon'ble High Court of Madras in the case of S.A. Ahamed Vs TNEB.

10.3 In this regard clauses 19.12 and 19.16 of the Terms and Conditions of Supply of the erstwhile TNEB are reproduced below :-

“In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board, the Board will have the right to demand an additional amount in case of under charging and the consumer will have the right to get refund of the excess amount in the case of overcharging where it is found that the consumer has been overcharged, the excess amount paid in such cases will be adjusted against future current consumption charges. If, even after such adjustment against future current consumption charges for two assessment periods, there is still a balance to be refunded, the refund of

will be made by cheque as in the case of refund of excess amount collected towards Current Consumption Deposit”.

“Revision of bills for Low Tension service connections arising out of any reason attributable to the Board like defective meter, defective metering arrangement, incorrect application of tariff, wrong billing etc., will be made for the duration of the period for which such revision is called for, subject to a maximum back period of three years from the date of billing.

Revision of bills arising out of any reason attributable to the consumer will be made for the duration for which such revision is called for.”

10.4 The Regulation 12.1 of Supply Code is reproduced below:

“12. Errors in billing

(1) In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Licensee, the Licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging.

(2) Where it is found that the consumer has been over-charged, the excess amount paid by such consumer shall be refunded along with interest at the rate applicable for security deposit. The interest shall be computed from the date on which the excess amount was paid. Such excess amount with interest may be paid by cheque in the month subsequent to the detection of excess recovery or may be adjusted in the future current consumption bills upto two assessments at the option of the consumer. The sum which remains to be recovered after two assessments may be paid by cheque. Interest shall be upto the date of last payment.

(3) Wherever the Licensees receive complaints from consumers that there is error in billing, etc. the Licensee shall resolve such disputes regarding quantum of

commercial transaction involved within the due date for payment, provided the complaint is lodged three days prior to the due date for payment. Such of those complaints received during the last three days period shall be resolved before the next billing along with refunds / adjustments if any. However, the consumer shall not, on the plea of incorrectness of the charges, withhold any portion of the charges. ”

10.5 On a careful reading of the said clause 19.12, it is noted that any clerical errors or mistakes in the amount levied by the board could be corrected and the board has right to levy the additional amount in case of undercharging the consumer and the consumer has the right to claim refund of the excess amount in case of overcharging. As per clause 19.16, the revision in bills shall be done for a maximum period of three years from the date of billing.

10.6 The regulation 12.1 supply code also specify the same. But no back period was mentioned for claiming the revision in billing.

10.7 In this case, the electronic meter fixed in the appellant service connection, can read only KVA demand. Hence for arriving the KW demand, the licensee has to multiply the KVA demand by the average power factor of the respective month. But the licensee has considered the power factor as 0.9 as in the case of arriving the connected load and arrived the KW demand reached. A power factor of 0.9 will be adopted for arriving the connected load in KW when the connected load is given in KVA as per clause 2.01(ix) of the Terms and Conditions of Supply and as per the 2(d) of the Supply Code. The respondent informed that instead of multiplying the KVA demand reached in a particular

month by the average power factor shown by the meter for that particular month, it was inadvertently multiplied by 0.9.

10.8 In this regard, it is also to be pointed out that, the appellant has got power factor incentive for maintaining the power factor above 0.9. Hence, the monthly average power factor is a known and accepted value but has not been taken for arriving the KW demand. As the power factor was wrongly adopted as 0.9 instead of known value of average power factor, the licensee is having right to demand the shortfall as per the Terms and Conditions of Supply of erstwhile TNEB and also as per Regulation 12.1 of the Supply Code. Hence, it is held that it is an error in billing.

11. Findings on the third issue:

11.1 It is noted that the excess demand charges for exceeding the sanctioned demand was levied for seven months based on audit remarks on 2-4-2005. In the above, the demand exceeded in the first month was noted as first occurrence and the subsequent violations are treated as second, third and so on and the excess demand charges were arrived by adopting 1.5% of the total energy supplied for every KW exceeded over and above 112 KW for the first two occurrences and 3% of total energy for every KW exceeded over and above 112 KW for third and subsequent occurrences.

11.2 However, the CGRF of Nilgiris EDC has ordered to levy the excess demand charges at 1.5% of the total energy for every KW exceeded over and above for all the months instead of 3% for 3rd and subsequent months. Hence, it

is noted that the CGRF has considered the violations noted in all the months as one occurrence and calculated the excess demand charges accordingly.

11.3 In this regard, I am also agreeing with the view of the CGRF as the intimation regarding exceeding of sanctioned demand for all the months was intimated to the appellant in one notice at a later date and hence each month violation cannot be treated as a separate occurrence for arriving at the excess demand charges.

11.4 As the excess demand charges for third and subsequent occurrence of exceeding the demand is double the rate of second occurrence, the consumer should know the number of occurrence to avoid the next occurrence and also to know the financial implication of such occurrences.

11.5 In view of the above, it is held that the excess demand charges for exceeding the sanctioned demand not issued along with the respective monthly bills but issued at a later date along with some more months due to audit objection or any other reason in a single notice shall be treated as a single occurrence only.

11.6 In respect of AP 295/2011, on a perusal of the working sheet furnished by the CGRF, it is seen that the Appellant has already exceeded sanctioned demand in 6/2003, 7/2003 & 2/2004 even while adopting the power factor as 0.9 instead of the average power factor of the respective months and the excess demand charges were collected from the Appellant in the respective month. Hence, already there are three occurrences of exceeding the sanctioned demand. As per Terms and Conditions of Supply of TNEB and also as per

Supply Code provisions, the third and subsequent occurrence of exceeding the sanctioned demand over 112KW shall be charged at 3% charges of electricity supplied for every KW or part there of over and above 112 KW. But it is seen that only 1.5% of the energy supplied was ordered by the CGRF of Nilgrs EDC.

11.7 In respect of A.P. No.296 of 2011, on perusal of working sheet furnished by CGRF of Nilgrs EDC, it is noted that M/s Kannavarai Tea Industries have not exceeded the sanctioned demand previously. Hence, I am concurring with the view of CGRF of Nilgrs EDC.

12. Conclusion :

12.1 In view of my findings given in paras 9 to 11 above. I am unable to interfere with the orders of CGRF.

12.2 With the above findings , the AP Nos. 295 & 296 of 2011 are disposed of by the Electricity Ombudsman . No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

- 1) M/s Karodaiya Tea Industries
Rep by its managing partner,
Thiru. B.L.Anand,
Konavakorai (P.O), Batalada,
The Nilgrs

- 2) M/s kannavarai Tea Industries,
Rep by its Managing Partner,
Thiru. B.L. Anand,
Batalada,
Konavakorai Post, Kotagiri,
The Nilgrs.

- 3) The Superintending Engineer,
Consumer Grievance Redressal Forum,
Nilgris Electricity Distribution Circle,
Udhagamandalam
- 4) The Assistant Engineer,
TANGEDCO(Formerly TNEB)
Aravenu,
Nilgris
- 5) The Chairman & Managing Director,
TANGEDCO,
144, Anna Salai,
Chennai – 600 002.
- 6) The Secretary,
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai,
Egmore,
Chennai – 600 008.
- 7) The Assistant Director (Computer),
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai
Egmore,
Chennai – 600 008. (for hosting in the website).

11.7 In view of the reasons furnished in the previous para, the excess demand charges for exceeding the sanctioned demand over and above the 112 KW for the month of 2/2004, 4/2004 & 7/2004 shall be calculated at 3% charges of electricity supplied for every KW of or part there of over and above 112 KW. The licensee is directed to work out the above and issue a revised demand in case of SC No. 123 of M/s. Karodaya Tea Industries, Badoda.

11.8 In respect of AP No. 296 of 2011, on perusal of the working sheet furnished by CGRF of Nilgiris EDC, it is noted that M/s Kannavarai Tea Industries have not exceeded the sanctioned demand previously . Hence, I am concurring with the orders of CGRF of Nilgiris in respect of AP No. 296 of 2011.

12. Conclusion :

12.1 AP No. 295 of 2011

Inview of my findings furnished in paras 9,10 & 11 above, the excess demand charges for exceeding the sanctioned demand shall be levied as detailed below on M/s Karodaya Tea Industries , the Appellant in AP No. 295 of 2011.

- (i) For the month of 6/2003 & 7/2003 at the rate of 1.5% of the total charges for electricity supplied for every KW excess or part thereof over and above 112 KW.
- (ii) For the month of 2/2004, 4/2004 & 7/2004 at the rate of 3 % of the total charges for the electricity supplied for every KW excess or part thereof over and above 112KW.