



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 9 of 2012

M/s. Hariram Chemicals Ltd,
672/2, Mellamathur,
Anaikuttam – 626 130

. . . . Appellant
(Rep by Thiru R. Kumar/Advocate &
Thiru C. Srinivasan, Director/ Hariram
Chemicals (P) Ltd)

Vs

The Superintending Engineer,
Virudhunagar Electricity Distribution circle
TANGEDCO,
Virudhunagar

. Respondent
(Rep by Thiru Jegadeesh /Accounts
Officer/Virudhu Nagar EDC)

Dates of hearing: 31.8.2012 & 19.10.2012

Date of Order :16.11.2012

The above appeal petition No. AP 9 of 2012 came up for hearings before Electricity Ombudsman on 31.8.2012 & 19.10.2012. Upon perusing the above petition, counter affidavit and connected records and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. **Prayer of the Appellant** :- The Appellant prayed for the following:-
- (i) Cancel the penalty levied vide Superintending Engineer, letter No. SE/VREDC/VDR/AO/R/RCS/AS/D744/2009 dt 26.10.2009 and SE/VDR/AO/R/RCS/AS/FHTSC101/D869/ 2009 dt 21.12.2009.
 - (ii) Refund of Rs.6,37,088/- paid on 20.8.2009 and 21.01.2010 or adjust the same in future consumption bills with interest from the date of remittance.

2. **Brief history of the case** :-

2.1 The Appellant is the owner of the HTSC No. 101 and the above service is available in the jurisdiction of the Respondent. The appellant's industry is a small scale industry and is manufacturing potassium chlorate. In view of the power crisis, the licensee introduced Restriction & Control Measures in November 2008. Based on the above, Restriction & Control Measures Demand and Energy quota were fixed for the above industry on 1.11.2008. The quota fixed was 316.08 KVA as Demand and 1316291 units as energy. As the industry has requested for fixing optimum demand the demand quota was revised as 450 KVA and the energy quota was fixed as 1316291 units vide letter dt 12.11.2008 issued by the respondent and the industry was informed to operate only for 21 days. The industry has informed that the Additional load of 170 KVA sanctioned on 18.9.2008 has not been taken into account while fixing the quota and hence requested for revision in the quota and accordingly, the SE/Virudhunagar Electricity Distribution Circle has revised the Demand quota as 418 KVA and

energy quota as 1,75,246/- units vide letter dt. 20.11.2008. The Superintending Engineer has included Rs.4,32,088/- as adjustment charges in 7/2009 bill and clarified that the amount was levied towards excess demand charges and excess energy charges for exceeding the peak hour restriction. Further, similar penalty was levied for the month of April and May 2009 which amounts to Rs.5,73,115/-. As the Appellant's representation to Superintending Engineer & Chief Engineer has not yielded any result he filed a writ petition No. 1631 of 2010 & MP (MD) No. 1 of 2010 in the Hon'ble Madurai Bench of Madras High Court and obtained orders quashing the impugned demands of penalty. As the Superintending Engineer has not responded for his representation for refund of the amount paid he filed his petition to CGRF of Virudhunagar Electricity Distribution Circle and CGRF of Virudhunagar Electricity Distribution Circle has ordered to levy penalty by fixing the norms for a continuous process industry. Aggrieved over the above order, the Appellant filed this appeal petition.

3. Contentions of Appellant :-

The Appellant contended the following in his counter.

- (i) The Appellant states that their company is a power intensive electro Chemical Unit working on continuous process since 1989.
- (ii) The Appellant submits that initially based on average consumption quota was fixed. As this was insufficient to operate the plant, the Appellant had by its letter dated 4.11.2008 requested the Superintending Engineer to revise the quota. The Appellant submits that after inspection the quota was revised to 450 KVA with energy 131629 units vide letter No.

SE/VDR/AO/R/RCS/ASF/PC/HTSCN0101/08 dt 12.11.2008 with directions to consume within 21 days as a continuous process industry.

(iii) Since the additional demand of 170 KVA already sanctioned to the Appellant on 18.9.2008 was not considered while determining the revised quota on 12.11.2008, the Appellant represented to include the demand and refix the quote vide letter dated 20.11.2008.

(iv) Considering the Appellant's representation dated 20.11.2008, the Respondent refixed the quota with a demand of 418 KVA and energy 175246 units as per Respondent's letter No. SE/VDR/AO/R/RCS/Powercut/HTSC. No. 101/2008 dated 20.11.2008. In and by the said order the Respondent instructed not to exceed the quota at any period but without specifying the number of days within which the energy was to be consumed.

(v) While the Appellant was following the instructions of the order dated 20.11.2008, the Respondent passed an order on the ground of penalty for excess consumption energy and demand during peak hour in the month of July, 2009. The Respondent went on and levied additional penalty for the month of April and May 2009 to the tune of Rs.5,73, 115/- towards peak hour consumption charges. Against the order of penalty imposed retrospectively on the Appellant, which is a continuous process industry the Appellant preferred the appeal before the Consumer Grievances Redressal Forum, Virudhunagar. The Appellant submits that the Respondent has by

its impugned order Lr. No. SE.TVREDC/AEE/PROQDEV/VDR/F.CGRF /D.NO.172/12 dated 1.2.012 dismissed the application.

- (vi) The Hon'ble Forum has failed to see that para I (n) of the memo no CE/comml/EE/DSM/F. Power cut /D001/2008 of the Chief Engineer, Chennai dated 01.11.2008 states that "in the case of continuous process industries and those HT service which cannot operate with the present level cut, the Chief Engineer/Distribution concerned can fix such optimum/minimum demand as may be required to operate the industry.
- (vii) The Hon'ble forum has failed to see that the Appellant industry is a continuous process industry and has never ceased to become a continuous process industry.
- (viii) The Hon'ble forum failed to see that as per regulations in paragraph VI (a) in the event of a consumer exceeds the quota fixed, the MD shall be reset immediately and appropriate action be taken. The check reading, monthly reading for bill and CMRI download data were taken and recorded in the reading register as per the guidelines laid down in Clause VI (a), (b) and (f) by the officers of the Respondent. But the meter had not been reset for the alleged excess consumption of the quota at any period of time by the inspecting officers. The Hon'ble Forum failed to see that this procedure has not been followed assuming without admitting the contentions of the Respondent. This proves that the Appellant unit has not violated the sanctioned limit.

- (ix) The Hon'ble forum failed to see that the impugned order is in gross violation of principles of natural justice as no notice was given about the impugned demand and the impugned order is passed without the opportunity of representation by the appellant. This was challenged by the Petitioner before the Hon'ble Madras High Court, Madurai Bench. The Hon'ble court in para 3 of the order passed in the W.P. 1631 of 2010 dated 12.02.2010 held that the impugned order is set aside and that the Respondents are free to issue fresh notice. The Hon'ble CGRF failed to see that no fresh notice had been issued by the board and since the impugned order had been set aside the board was liable to return the money collected from the Appellant.
- (x) The Hon'ble CGRF failed to see that even in calculation of demand charges in memo dated 26.10.2009 excess demand is calculated Rs.900 per KVA whereas in order dated 27.12.2009 it is calculated at the rate of Rs.600 per KVA.
- (xi) The Hon'ble Forum has failed to see that the electricity board has neither the power nor authority to collect the impugned demand without following the procedure in the event of excess consumption of quota.

4. Contentions of the Respondent :-

The Respondent has contended the following in the Counter.

- (i) The Appellant is an industry manufacturing potassium chlorate at Virudhunagar. Due to power cut, the quota system was introduced by the Respondent and as per working instructions issued by TNEB, vide

CE/Commercial/Chennai's Memo No. CE/Cmml/EE/DSM/F.Powercut/D 001/2008 dt.01.11.2008, a cut of 40% was on the base demand and energy for HT industrial and commercial services was implemented and the quota was fixed to all HT services. Like others, the above Appellant was also intimated vide Letter No. SE/VREDC/AEE/GL/AEI/f.Powercut/D 1889/2008 dt. 01.11.2008 the demand quota as 316.08 KVA and Energy quota as 131629 units.

- (ii) The Appellant requested vide letter dt.04.11.2008, to fix the optimum demand for their industry since it was a continuous process industry. So, the already permitted quota was revised as follows as opted by them.

Demand: 450 KVA for 21 days and Energy 131629 units only.

And the same was communicated to the Appellant vide letter No. SE/VDR/AO/R/RCS/AS/F.Powercut/HT SC 101/08 dt. 12.11.2008.

- (iii) The Appellant had requested to set aside the Respondents communication dt.12.11.2008 and to fix a revised quota by considering the additional demand of 170 KVA omitted in terms of calculation carried out by the Respondent. It is further stated that the office communication dt.12.11.2008 was set-aside and the revised quota order was issued vide communication dt.20.11.2008 as detailed below :

Quota Demand : 316.08 +102(60% of 170KVA) : 418KVA

Quota Energy : 131629+43617 =175246 units

- (iv) According to R&C measures, an industry can avail energy for all days in a month with peak hour restriction. If a continuous process industry

requested for optimum demand, it can avail energy without peak hour restriction but for a limited number of days only in a month according to their demand requested instead of full month. Since the Appellant had requested for cancellation of the Respondents optimum demand quota communication dt.12.11.2008, a revised quota communication dt.20.11.2008 was issued so as to avail the energy for all days of a month with peak hour restriction as issued in original quota order dt.01.11.2008.

- (v) After fixing a five slot meter in the above HT Service, it was seen that the industry has availed energy during peak hour. This is against the R & C measures. It is further stated that it was clear that Appellant had enjoyed the benefit of continuous process industry by availing the peak hour energy consumption as well as the normal industry by availing the energy for the full month. Then the penalty for peak hour energy was included in 7/09 cc bill. Subsequently the CC bill for 4/09 and 5/09 was revised for peak hour penalty and a notice dt.21.12.2009 was issued to the Appellant.
- (vi) After remitting a part amount, the Appellant had filed WP No.1631/2010 before the Hon'ble High Court and the High Court had held the following: as, "IT WOULD BE OPEN TO THE RESPONDENT TO ISSUE NOTICE TO THE PETITIONER AFRESH, AFFORD OPPORTUNITY OF PERSONAL HEARING AND THEN RAISE THE DEMAND NOTICE/BILL".
- (vii) The Appellant had requested the Consumer Grievance Redressal Forum, TNGDCL Virudhunagar EDC to quash the demand notice already issued and to refund the amount already remitted by them. It is submitted that in

the CGRF, the above Appellant had claimed that their industry was a continuous process industry. After a detailed hearing, the CGRF, Virudhunagar EDC has delivered the final order on 30.01.2012 as to levy the penalty by fixing the norms for a continuous process industry. After obtaining this order the Appellant had again filed this petition before Tamil Nadu Electricity Ombudsman.

(viii) Continues process industry may avail energy.

(a) For a whole month with peak hour restriction (or)

(b) For a limited number of days in every month without peak hour restriction.

Since this Appellant had availed peak hour energy as well as full month utilization (i.e) both the benefit of continuous process industry and non-continuous process industry, they have to be penalized based on either under item No. a or b above.

(ix) According to R & C measures, an industry can avail energy for all days in a month with peak hour restriction. If a continuous process industry requested for optimum demand, it can avail energy without peak hour restriction but for a limited number of days only in a month according to their demand requested instead of full month. Since the Appellant had requested for cancellation of the Respondents optimum demand quota communication dt.12.11.2008, a revised quota communication dt. 20.11.2008 was issued so as to avail the energy for all days of a month with peak hour restriction as issued in original quota order dt.01.11.2008.

(x) It is further stated that it was clear that Appellant had enjoyed the benefit of continuous process industry by availing the peak hour energy consumption as well as the normal industry by availing the energy for the full month.

5. Hearings held by the Electricity Ombudsman :-

In order to enable the Appellant and Respondents to purforth their arguments in person hearings were held before the Electricity Ombudsman on 31.8.2012 & 19.10.2012.

6. Argument of the Appellant :-

6.1 The Appellant was represented by Thiru R. Kumar, Advocate and Thiru C. Srinivasan, Director Hariram Chemicals (P) Ltd.

6.2 The Learned advocate reiterated the contents of the Appeal Petition. He argued that the Hon'ble Madurai Bench of High Court of Madras in WP (MD) No. 1631 of 2010 has set aside the demand notice issued by the Respondent and directed the Respondent to issue notice to the petitioner afresh, afford opportunity of personal hearing and then issue a demand notice. But, the Appellant has not issued any fresh notice and hence the amount collected based on the set aside demand notice has to be refunded.

6.3 The learned counsel also argued that the Appellant's industry is a continuous process industry and hence the evening peak hour restriction is not applicable to them. He also argued that the various agencies who have inspected the services have also not pointed out any evening peak hour violation noticed in the industry. The advocate without prejudice to his arguments to no peak hour

violation pointed out that in the demand notice dt. 26.10.2009 the excess demand charges was calculated at Rs.900/- per KVA and on the demand notice dt.27.12.2009, the same was calculated at Rs.600/- per KVA and argued that the excess demand charges shall be calculated only at Rs.600/- per KVA.

6.4 On 19.10.2012, the learned advocate informed that based on audit remarks, the respondent has also issued a demand of Rs.15,27,265/- letter dt.20.3.2012 towards short levy of excess demand charges and excess energy charges for peak hour violation for the period from 25.2.2009 to 25.7.2009.

6.5 The advocate also informed that the excess demand charges and excess energy charges for the period of April 2009, May 2009 and July 2009, refund for which the Appellant has filed the present appeal to Electricity Ombudsman has also been included in the above demand. The learned advocate further stated that the Appellant has filed a writ petition in the Madurai Bench of the High Court of Madras against the above demand in WP No. (MD) 6451 of 2012 and the Hon'ble High Court in its order dt.4.5.2012 has ordered to treat the above demand notice as show cause notice and directed the Appellant to make a representation on the same within a period of 4 weeks and directed the respondents to consider the same on merits in accordance with law, within a period of three weeks, thereafter. The learned counsel informed that in compliance with the above direction, the Appellant made a representation to Superintending Engineer, Virudhunagar Electricity Distribution Circle on 30.5.2012 and is pending to be disposed by the Superintending Engineer, Virudhunagar Electricity Distribution Circle.

7. Argument of the Respondent :-

7.1 The Respondent was represented by Thiru Jegadesh Accounts Officer on both the days of hearing.

7.2 The respondent's representative, reiterated the contents of the counter. He argued that the continuous process industry which avails the optimum load is eligible to run the industry during evening peak hours. But, the Appellant has applied for cancellation of the optimum load of 450 KVA sanctioned to them and based on their request only the revised quota was fixed to them. He further argued that as the optimum load fixed was cancelled, the peak hour restriction is applicable to the appellant's industry.

8. Written argument of the Respondent :-

8.1 The Respondent has furnished the following in his written argument dt. 17.9.2012.

(i) The break up details for an amount of Rs.4,32,088.80 is furnished below.

Exceeded Energy units 19682 x 8.40	=	1,65,328.80
Exceed demand during Peak Hours		
– Recorded demand	482.4	
Less 5% Quota 32.8 }		
1 & Tr. Loss 5.0 }	<u>37.8</u>	
	444.6 x 600	= 2,66,760.00

Total		Rs.4,32,088.80

(ii) The consumer has not come forward to correct the discrepancies based on the Court Order. As such it was assumed that the consumer has satisfied the contents which was already sent to the consumer.

- (iii) The quota was refixed based on the consumer's representation dt.20.11.2008. In this letter, the consumer has stated that the quota already fixed in this office letter dt. 12.11.2008 is now cancelled and to refix the quota the consumer has not come forward to revise the quota refixed without considering the continuous process category.
- (iv) After fixing a five slot meter, it has been noticed that the industry has availed energy during peak hour. This is against the R & C measures. Hence, it was clear that Appellant had enjoyed the benefit of continuous process industry by availing the peak hour energy consumption as well as the normal hour by availing the energy for the full month.
- (v) The working of peak hour restrictions has been made from December 2008 onwards at our end only based on the outcome of this judgment. In this regard, the respondent has submitted a copy of audit slip No. 38 dt. 29.6.2010 also.

9. Written argument of the Appellant :-

9.1 The Appellant has furnished his written argument on 9-10-2012. The arguments which are not covered in the Appeal are furnished below:-

- (i) It is submitted that 25 days restriction in a month for continuous process industry was imposed vide Memo No. CE/Comm/EE/DSM/AEE/F.Power cut/D.394/09 dated 31.8.2009. Hence, it is submitted that the 25 days in a month is applicable for continuous process industry only with effect from 31.8.2009.

- (ii) It is submitted that sum of Rs.4,32,088.80 relates to July 2009 period and the levy of Rs.5,73,115/- relates to the month of April and May, 2009. It is a settled law that no charges can be levied and collected with retrospective effect.
- (iii) It is further submitted that only on 15.9.2009 vide Lr. No. SE/VDR.AO/R/RCS/AS/F. continuous process/D.101/09 dt.15.09.2009, the Respondent have communicated about the cancellation of continuous process industry status on the erroneous interpretation and understanding by the Respondent.
- (iv) The check readings, monthly reading along with download of CMRI data were also taken as per the guidelines laid out in Clause VI (a) and the meter had not been reset for exceeding the quota at any period after 26.05.2009 by the inspecting officers and during monthly reading, also any excess demand and energy not deducted in the consecutive month energy and demand quota by competent authorities .
- (v) No prior notice was given to the consumer informing the alleged peak-hour consumption of power and proposing to levy penalty for no fault on the part of the consumer. No penalty shall be imposed on the consumer unheard and hence the order is in violation of the principles of natural justice and liable to be set aside.
- (vi)As per the orders of the Tamil Nadu Electricity Regulatory Commission, TNEB can only reduce the quota allowed if there is violation of peak hour restriction. It does not authorize imposition of penalty.

(vii) Huge anomalies are in their energy quota, demand quota and demand charges in respondent's letter dt.26.10.09 and 29.06.10 and the present written argument filed on 17.09.12 for imposing penalty for peak hour.

10. Findings of the Electricity Ombudsman:-

10.1 The main argument of the Appellant is that the impugned demand notices issued on 26.10.2009 and 21.12.2009 were set aside by the order dt.12.2.2010 of the Hon'ble Madurai Bench of High Court of Madras in WP No. 1631 of 2010 and hence the amount collected are to be refunded.

10.2 As the Appellant has referred to the Order of the Hon'ble Madurai Bench of High Court in WP No. 1631 of 2010, the relevant portion of the judgment is extracted below:-

“ 1) The writ petition is filed for a certiorari calling for the records of the respondent in Lr. Nos. SE/VREDC/VDR/AO/R/RCS/AS/D.744/2009, dated 26.10.2009 and SE/VDR/AO/R/RCS/AS/F.HT.SC.101/D.869/ 2009, dated 21.12.2009 and quash the same in so far as it relates to the levy of penalty for allegedly exceeding quota during evening peak hours as illegal, arbitrary, without the authority of law and against the orders of the Tamil Nadu Electricity Regulatory Commission made in Miscellaneous petition No. 42 of 2008, dated 28.11.2008.

2) Both the learned counsel for the petitioner and the learned counsel appearing for the respondent electricity board would submit that on identical issues, orders have been passed earlier by this court quashing the impugned order and giving liberty to the respondent board to issue notice afresh. Both the counsel submitted that similar orders could be passed in these writ petitions also.

3) In view of the submissions made by the learned counsel appearing for the petitioner, as well as the respondents, and in view of the orders passed by this court, in a number of writ petitions earlier, the impugned demand notice/bill,

issued by the respondent, is set aside. However, it would be open to the respondent to issue notice to the petitioner afresh, afford opportunity or personal hearing and then raise the demand notice bill.

4) After due notice is issued by the respondent, the petitioner would be at liberty to challenge the same, if it is found necessary to do so, by raising all the grounds available to the petitioner, including those which have been raised in this writ petition. It would also be open to the petitioner to raise the ground that the respondent has no authority to levy the penalty, on the ground that it is against the dictum laid down by the Tamil Nadu Electricity Regulatory Commission, in MP NO. 42 of 2008 dated 28.11.2008.

5) In case the petitioner had already paid the bill amount it would be adjusted to the amounts that may be claimed by the Tamil Nadu Electricity Board, in the future bills relating to the petitioner, in case the final decision is in favour of the petitioner. The petitioner shall fully cooperate by participating in the inquiry or hearing that may be held by the concerned authorities of the respondent Electricity Board.

6) The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

10.3 On a careful reading of the said order of the Hon'ble Madurai Bench of Madras High Court, it is noted that the Hon'ble Court has set aside the impugned demand notice. However, it was also ordered that it is open to the respondent to issue a notice afresh afford opportunity of personal hearing and then raise the demand notice.

10.4 But, it is noted that the respondent has not issued any fresh notice in lieu of the impugned demand notices which were set aside as ordered by the Hon'ble High Court.

10.5 The respondent in his written argument informed that as the consumer (Appellant) has not come forward to correct the discrepancies based on the court order, it was assumed that the consumer is satisfied with the contents which was already sent to the consumer.

10.6 The advocate argued that the impugned demand notice was set aside by the Hon'ble court and in the absence of any fresh demand notice issued by the Board, no demand is pending and the amount collected has to be refunded only. The learned advocate has also pointed out that in the order of the Hon'ble High court it has also been ordered that if the bill amount has already been paid it would be adjusted in future bills in support of his argument.

10.7 The advocate informed that they have not filed any contempt petition, as by filing contempt petition they can pray only for punishing the respondent but for refund of the collected amount, they have to approach the forum only and accordingly they filed a petition to CGRF and an appeal to Electricity Ombudsman against the order of CGRF.

10.8 The learned counsel has further informed that the respondent has issued a demand notice on 20.3.2012 for Rs.15,27,266/- towards excess demand charges and excess energy charges for violation of evening peak hour for the period from 20.2.2009 to 25.7.2009 which includes the period of April, May and July 2009 covered in the present appeal. The above demand was also challenged by the Appellant by filing a writ petition in the Madurai bench of High court of Madras and the Hon'ble court has ordered to treat the above demand notice as show cause notice and directed the petitioner(Appellant) to make a representation on the same

within a period of 4 weeks and directed the respondent to consider the same on merits within a period of three weeks thereafter. It is also pointed out by the learned advocate that the demand for the month of April 2009, May 2009 and July 2009, which are in dispute in this appeal petition has also been included in the above demand notice to be treated as show cause notice. The advocate also informed that based on the order of the Hon'ble Court, the Appellant has filed its representation to the Superintending Engineer, Virudhunagar Electricity Distribution Circle and the Superintending Engineer, Virudhunagar Electricity Distribution Circle is yet to issue any order on their representation.

10.9 As the advocate referred WP (MD) 6451 of 2012 the relevant portion of WP (MD) 6451 OF 2012 dt.4.5.2012 is extracted below:-

“2) The petitioner filed WP (MD) No. 1631 of 2010 questioning the aforesaid orders of the respondent and the writ petition was allowed and the impugned order was set aside on the ground that the order was passed without hearing the petitioner. An opportunity was given to the respondent to issue notice to the petitioner afresh and to afford opportunity of personal hearing and then raise the demand notice / bill, by order dated 12.02.2010.

3) Now the respondent in the present writ petition issued the impugned order dated 20.03.2012 directing the petitioner to pay a sum of Rs.15,27,265/- as penalty for exceeding the quota for the period 20.02.2009 to 25.07.2009. The petitioner has filed the present writ petition to quash the said order dated 20.03.2012 passed by the respondent.

4) By consent of both the parties, the main writ petition itself is taken up for final disposal.

5) Learned counsel for the respondent fairly submitted that the impugned order was passed without hearing the petitioner. Under these circumstances, the learned counsel submits that the impugned order may be treated as show-cause notice and the

petitioner may be permitted to make a representation on the same within a stipulated period and thereafter, the respondent maybe permitted to pass orders considering the representation.

6) In view of the aforesaid submission made by the learned counsel for the respondent, the writ petition is disposed of, treating the impugned order as show-cause notice and the petitioner is directed to make a representation on the same, within a period of four weeks from today and the respondent is directed to consider the same on merits and in accordance with law, within a period of three weeks, thereafter.

10.10 It is noted from the above, that the demand notice issued for Rs.15,27,265/- as penalty for exceeding the quota for the period from 20.2.2009 to 25.7.2009 has been ordered to be treated as a show cause notice, as per the consent given by both parties. Incidentally, the demand notice for the period April, May & July 2009, set aside by the Hon'ble Court in WP 1631 of 2010 and directed to issue a fresh notice has also been covered in the above show cause notice.

10.11 As per WP 1631 of 2010, the Respondent is free to issue a fresh notice for the demand covered in the impugned order dt.26.10.2009 and 21.12.2009 and as per WP (MD) 6451 of 2012, the demand of Rs.15,27,265/- issued by the Respondent is treated as show cause notice which includes the demand covered in impugned order dt.26.10.2009 and 21.12.2009 also.

10.12 It is also noted that the appellant has filed its representation to the Superintending Engineer, Virudhunagar Electricity Distribution Circle on 30.5.2012 as directed by the Hon'ble court and Superintending Engineer is yet to give his order.

10.13 As the impugned demand covered in the present appeal was also covered in the representation filed by the Appellant as per the direction of the Hon'ble High

Court of Madras in its order in WP (MD) 6451 of 2012 and is pending with Superintending Engineer. I am of the view that it is premature to issue any findings on the Appeal petition. However, the Superintending Engineer, Virudhunagar Electricity Distribution Circle is directed to dispose the representation filed by the Appellant early as directed by the Hon'ble High Court. The Appellant on receipt of the orders on his petition dt.30.5.2012, may agitate the issue in the appropriate forum, if he is not satisfied with the orders passed by the Superintending Engineer, Virudhunagar Electricity Distribution Circle .

10.14 With regard to the argument of the advocate of the Appellant that as the demand notice was set aside, the amount collected based on the above demand notice has to be refunded, I would like to refer WP (MP) No.1631 of 2010.

10.15 In this connection, the paras 3,4& 5 of WP (MD) No.1631 of 2010 is reproduced below:-

“3) In view of the submissions made by the learned counsel appearing for the petitioner, as well as the respondents, and in view of the orders passed by this Court, in a number of writ petitions earlier, the impugned demand notice/bill, issued by the respondent, is set aside. However, it would be open to the respondent to issue notice to the petitioner afresh afford opportunity of personal hearing and then raise the demand notice/ bill.

4) After due notice is issued by the respondent, the petitioner would be at liberty to challenge the same, if it is found necessary to do so, by raising all the grounds available to the petitioner, including those which have been raised in this writ petition. It would also be open to the petitioner to raise the ground that the respondent has no authority to levy the penalty, on the ground that it is against the dictum laid down by the Tamil Nadu Electricity Regulatory Commission, in MP. NO. 42 of 2008, dated 28.11.2008.

5) In case the petitioner had already paid the bill amount it would be adjusted to the amounts that may be claimed by the Tamil Nadu Electricity Board, in the future bills relating to the petitioner, in case the final decision is in favour of the petitioner. The petitioner shall fully cooperate by participating in the inquiry or hearing that may be held by the concerned authorities of the respondent Electricity Board.

10.16 Plain reading of the para 5 of WP (MD) 1631 of 2010, it is noted that in case the petitioner had already paid the bill amount, it would be adjusted to the amounts that may be claimed by the Tamil Nadu Electricity Board, in the future bills relating to the petitioner, in case the final decision is in favour of the petitioner. Here the expression, “in case the final decision is in favour of the petitioner” is important. The order says when the final decision is in favour of the petitioner, then the amount has to be refunded. As per para 4 of the order of the Hon’ble High Court, the petitioner has liberty to challenge the fresh notice issued by the respondent and as per para 5 the petitioner shall fully co-operate by participating in the inquiry or hearing that may be held by the concerned authorities of the respondent Electricity Board.

10.17 Hence, on a conjoint reading of paras 3,4 & 5 of the Hon’ble High Court order in W.P (MD) No.1631 of 2010, it is noted that for getting refund of the amount already paid towards excess demand and excess energy charges, the appellant has to challenge the fresh demand notice issued by the respondent and get an order favourable to the appellant.

10.18 As the final decision of the licensee is yet to be issued on the representation filed by the appellant in response to the demand notice treated as show cause notice which includes the period covered in this appeal also, I am of the view, that the refund of the amount paid could be decided after issue of final orders by the respondent on the petition dt. 30.5.2012 of the appellant.

11. Conclusion :-

11.1 In view of my findings given in para 10 above, the respondent is directed to dispose the petition dt. 30.5.2012 filed by M/s. Hariram Chemicals (P) Ltd., on its merits and in accordance with law as ordered in WP 6451 of 2012 early without any more delay. The appellant may raise the issue in the appropriate forum if it is not satisfied with the orders issued by the SE/Virudhunagar EDC.

11.12 With the above orders, the AP 9 of 2012 is finally disposed of by the Electricity Ombudsman. No costs.

(A. Dharmaraj)
Electricity Ombudsman

To

- 1) M/s. Hariram Chemicals Ltd,
672/2, Mellamathur,
Anaikuttam – 626 130
- 2) The Superintending Engineer,
Virudhunagar Electricity Distribution circle
TANGEDCO,
Virudhunagar
- 3) The Chairman & Managing Director,
TANGEDCO,
NPKR Malaigai,
144, Anna Salai,
Chennai – 600 002.

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