

Court-II

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal No. 239 of 2015, A.No. 240 of 2015 & IA No. 393 of 2015, A.No. 241 of 2015 &
IA No. 394 of 2015 and A.No. 203 of 2015**

Dated : 08th February, 2016

**Present : Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of:

A.No. 239 of 2015

Indian Wind Power Association ...Appellant(s)
Versus
Tamil Nadu Generation & Distribution Corp. Ltd. & Ors. ...Respondent(s)

Counsel for the Appellant : Mr. Rahul Balaji, Mr. Senthil Jagdeesan and
Ms. Suchitra Kumbhat
Counsel for the Respondent(s) : Mr. G. Umapathy and Mr. Vallinayagam for R.
Nos. 1 to 3

A.N o. 240 of 2015 & IA No. 393 of 2015

Indian Wind Power Association ...Appellant(s)
Versus
Tamil Nadu Generation & Distribution Corp. Ltd. & Ors. ...Respondent(s)

Counsel for the Appellant : -
Counsel for the Respondent(s) : -

A.No. 241 of 2015 & IA No. 394 of 2015

Indian Wind Power Association ...Appellant(s)
Versus
Tamil Nadu Generation & Distribution Corp. Ltd. & Ors. ...Respondent(s)

Counsel for the Appellant : -
Counsel for the Respondent(s) : -

A.No. 203 of 2015

TANTRANSCO Ltd. & Ors. ...Appellant(s)
Versus
M/s Indian Wind Power Association & Ors. ...Respondent(s)

Counsel for the Appellant : Mr. G. Umapathy and Mr. Vallinayagam
Counsel for the Respondent(s) : Mr. Rahul Balaji, Mr. Senthil Jagdeesan and
Ms.Suchitra Kumbhat

ORDER

We have perused our earlier order dated 11.01.2016. The Secretary of Tamil Nadu Commission, in compliance of our earlier order, is present today and he has submitted Affidavit dated 05.02.2016. The Impugned Order before us have been passed by Two Members of the State Commission and both the Members gave almost contradictory versions. Against the contradictory version of the two Members of the State Commission the present appeals are before us. The Secretary of the Commission submits that the State Commission is just receiving the Petitions which are being filed for adjudication under Section 86(1)(f) of the Electricity Act, 2003, without processing or further listing them. Details of the matters pending before the Hon'ble High Court and Supreme Court relating to the appointment of the Chairman of the State Commission are given. The Single Bench of the Hon'ble High Court of Madras in MP No. 1 of 2015 in WP 20336 of 2015, captioned as *Tamil Nadu Spinning Mills Association Vs. Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) & Ors.*, vide ad-interim order dated 08.07.2015, passed the following order:

“11. The generation data submitted by SLDC gives an indication that it has not followed Merit Order Despatch strictly while backing down the cheaper wind power, the licensee has allowed purchase of high cost private power. As per the report of the petitioners, the wind power was backed down even when the frequency was below 50 Hz. The SLDC also did not refute it. The licensee also had entered into Short Term Power Purchase Agreement without taking into account the availability of wind power during June to September.

12. This Court, in the light of the overwhelming materials placed before it, is of the considered view that a prima facie case has been made out by the petitioner for grant of interim orders. Hence, there shall be an order of ad interim injunction till 04.08.2015.

13. Notice.

14. Post the matter on 04.08.2015. Counter of respondents by then.”

As of today, we have been informed by the learned counsel for the parties, that the ad-interim order dated 02.08.2015 is still in operation.

The Division Bench of the Madras High Court vide its order dated 06.11.2014 in MP No. 1 of 2014 in WA No. 2311 of 2012 captioned as *The KCP Ltd. Vs. The Superintending Engineer, Chennai Electricity Distribution Circle (North) TANGEDCO* passed the following order:

"This petition is filed seeking extension of the order of Status Quo granted by this Court on 10.7.2014 till the disposal of the Dispute Revision Petition in D.R.P. 78/2014 is listed and heard.

2. *In the affidavit filed in support of this petition, it is stated that pursuant to the interim order passed by this Court, TNERC is non-functional and a writ petition in W.P.No. 11940/2014 is filed, challenging the appointment of Chairperson of the TNERC other than the retired High Court Judge and in that writ petition, the Learned Advocate General has given an undertaking that no orders will be passed and till date, the said writ petition is not decided.*

3.(*). *"The Learned counsel appearing for the respondents pointed out that during the hearing held on 3.9.2014 in the said W.P.No. 11940 of 2014, the Advocate General submitted to the court that a number of functions other than those under Section 86(1)(f) are to be carried out by the Chairman in the interest of smooth functioning of the Commission and therefore, he may be permitted to discharge all functions under the Act except those under Section 86(1)(f) of the Electricity Act, 2003. The Hon'ble Court acceded to the prayer. When Thiru N. L. Rajah insisted for a written order in this regard the Hon'ble Court observed that it is a gentlemen's agreement and written order would not be necessary..."*

Both the parties have been heard on the way out of the present situation where Wind Power Association is said to be a sufferer because of the unique approach adopted by the said distribution licensee for buying power at a higher cost other than the Wind Power supplied in spite of the fact that wind power is available in the State.

A number of suggestions have been given by the parties present before us today. This Appellate Tribunal has all the power exercisable by the State Commission as provided under the CPC 1908 hence, this Appellate Tribunal is fully competent and empowered to exercise the power provided under Section 86(1)(f) of the Electricity Act, 2003. There is a suggestion by both the parties that this Appellate Tribunal may either decide the dispute itself or refer the matter for arbitration by appointing some Arbitrator. Both the parties are advised to go through the complexities of the problem and find out some solution within a week and also suggest some names of the Arbitrators, if any.

Post the matter for hearing on **18th February, 2016**.

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

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