

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

Appeal no. 327 of 2013

Dated: 30th June, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

**Indian Wind Energy Association,
Rep. by its Secretary General,
Door No. E, 6th Floor,
Shakti Towers-II,
766, Anna Salai,
Chennai- 600 002.**

... Appellant

Versus

**1. Tamil Nadu Generation and Distribution
Corporation Limited,
Rep. by its Chairman and
Managing Director,
144, Anna Salai,
Chennai- 600 002**

**2. Tamil Nadu Electricity Regulatory Commission,
TIDCO Office Building,
No. 19A, Rukmani, Lakshmiipathy Salai,
Marshalls Road, Egmore,
Chennai- 600 008**

...Respondent(s)

Counsel for the Appellant(s): Mr. Rahul Balaji

Counsel for the Respondent(s): Mr. S. Vallinayagam for R-1

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Indian Wind Power Association against the order dated 18.10.2013 passed by Tamil Nadu Electricity Regulatory Commission (“State Commission”) dismissing the Interim Application filed by the Appellant for impleadment in the proceedings of the Petition filed by Tamil Nadu Generation and Distribution Corporation Limited (“TANGEDCO”) seeking approval for purchase of additional power against the tender invited for long term procurement of power from conventional energy sources to meet the power demand in the State.

2. The Appellant is the Association of Wind Energy Generators. TANGEDCO is the Respondent no. 1.

Tamil Nadu Electricity Regulatory Commission is the Respondent no. 2.

3. The facts of the case are as under:

3.1 The Appellant Association sought to be impleaded in the proceeding of the Petition filed by TANGEDCO seeking the approval of the State Commission for the deviation in procurement of additional 2122 MW power against the offers received by them in the competitive bidding process for procurement of power on long term basis under Section 63 of the Electricity Act, 2003.

3.2 The main contention of the Appellant Association before the State Commission was that permission to procure the proposed quantum of power for long term period would have a direct impact on the dispatch of wind energy and would result in backing down of wind power generation. They stated that the increase in

purchase of power from conventional sources of energy would have alarming consequences of wind energy generators being asked to back down generation during the wind season.

3.3 The State Commission passed the impugned order dated 18.10.2013, approving procurement of additional 2122 MW of power against the tender floated by the TANGEDCO and dismissing the I.A. filed by the Appellant with a finding that it has no *locus standi* to be impleaded as the wind power is infirm power while the Petition is for purchase of base load power.

3.4 Aggrieved by the impugned order of the State Commission, the Appellant has filed this Appeal.

4. The Appellant had raised a number of issues in the Appeal but restricted the arguments to adverse

impact of procurement of additional power from the conventional sources of energy.

5. We have heard Shri Rahul Balaji, learned counsel for the Appellant and Shri S. Vallinayagam for TANGEDCO. The State Commission also filed the counter affidavit in support of the impugned order.

6. As mentioned above, even though a number of issues were raised in the Appeal, Shri Rahul Balaji, learned counsel for the Appellant during the hearing restricted the arguments only to the impact of procurement of additional power from conventional energy sources on the scheduling of energy from wind energy generators and that procurement of additional power should not be detrimental to the interest of the wind energy generators.

7. TANGEDCO in its submission has stated that the State has been facing power deficit to the tune of more than 4,000 MW and restriction & control measures to the tune of 20% on energy and demand for all HT consumers besides load shedding by rotation is being resorted to. Even at a conservative estimate, the demand is likely to increase by 8% per annum, i.e. about 1,000 MW for some more years. TANGEDCO has to make arrangements for firm power from conventional sources of energy to meet the requirement of the consumers of the State round the clock. Wind power is seasonal and confined to mere four months in a year. Therefore, it is necessary for them to procure firm power from conventional sources to maintain the correct mix of generation to be able to meet the demand of the consumers round the clock. However, all measures will be taken to absorb the

wind energy to the maximum extent by planning overhauling of thermal units during high wind season, keeping high cost IPPs as stand by, prudence in procuring short term power during high wind season, operating the gas stations at optimum levels, not operating hydro stations during high wind season, operating pump storage plants at hydro stations, etc.

8. We find that the main matter which was being considered by the State Commission was procurement of round the clock firm power for meeting the future power demand in the State. As already pointed out by the learned counsel for the TANGEDCO, the State was facing huge power shortage due to which it was resorting to restriction and control measures as also unscheduled load shedding. Wind energy is a seasonal energy and is not available round the clock around the year. Therefore, it is necessary for the

distribution licensee to maintain balance of the various sources of energy both conventional and renewable, in its portfolio. It is not correct for the wind energy generators to stall the process of procurement of firm power from conventional sources of energy which is also essentially required to be tied up in view of huge power shortage prevailing in the State and future growth of power demand and to meet the demand on round the clock basis. The State Commission is the appropriate authority to approve procurement of power from the various sources and to ensure that the balance is maintained between the various conventional and non-conventional sources of energy with a view to meet the power demand of the consumers on 24x7 basis.

9. However, the interest of the wind energy generators can be safeguarded by scheduling planned maintenance of conventional generating units during high wind season, procuring short term power after considering the likely availability from wind energy, backing down of generation at coal based thermal stations upto the minimum threshold limit when secondary oil support is not required, optimum scheduling of gas/liquid fuel based plants and hydro power plants keeping in view the availability of wind energy, operation of Pumped Storage Plants, etc.

10. In our opinion the wind energy should be utilized fully by optimum scheduling at conventional power plants subject to maintenance of grid security. Hence, we direct the State Commission to ensure, while approving the PPAs for procurement of long term power under Section 63 of the Electricity Act, 2003,

that there is no take or pay or 'must run' provision so that the power plants can be asked to back down generation upto the minimum threshold limit during the high wind season to accommodate generation from wind energy generators.

11. It has been submitted by the State Commission that the issue of "Must Run Status" for the wind energy generators is pending before the State Commission for adjudication consequent to the transfer of Writ Petitions by the High Court of Madras and those Petitions are listed for hearing shortly. Thus, the Appellant has liberty to participate in these proceedings to raise the issues relating to full utilization of the wind energy capacity.

12. In view of above, we do not find any merit in the Appeal relating to intervention of the Appellant in the proceeding for long term procurement of power in the

present case. However, we have given some directions to the State Commission keeping in view the interest of wind energy generators.

13. Accordingly, the Appeal is disposed of with the above directions to the State Commission.

14. Pronounced in the open court on this **30th day of June, 2014.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/~~NON-REPORTABLE~~

vs