

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL No. 36 OF 2017**

Dated : 27.01.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**TAMILNADU GENERATION AND DISTRIBUTION  
CORPORATION LTD., (TANGEDCO),**  
No. 144, Anna Salai,  
Chennai – 600 002

... Appellant

*Versus*

**1. M/S. AMBIKA COTTON MILLS LTD**  
*Through its Director Dr. K. Venkatachalam*  
Natham Road, Kanniapuram Post,  
Dindigul – 624 308

**2. Tamil Nadu Electricity Regulatory Commission**  
Through its Secretary  
No. 19A, Rukmini Lakshmi pathy Salai  
Egmore Chennai – 600 008

... Respondent(s)

Counsel for the Appellant(s) : Anusha Nagarajan

Counsel for the Respondent(s) : M.G. Ramachandran, Sr. Adv.  
Kumar Mihir  
Avinash Menon for Res. 1

## J U D G M E N T

**PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. This appellant, Tamil Nadu Generation and Distribution Corporation Limited (in short "TANGEDCO") has assailed the order dated 31.03.2016 passed by the 2<sup>nd</sup> respondent Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as "the Commission") wherein the Commission has sought to clarify the applicability of the slot-to-slot adjustment of wind energy generators covered under the Commission's order No.3 dated 15.05.2006.

2. We shall, at first, advert to facts of the case giving rise to the present appeal.

3. The Commission issued tariff order No.3 of 2006 related to Non-Conventional Energy Sources (NCES) (in short "2006 tariff order") on 15.05.2006 applicable to wind energy generators commissioned on or after the said date. Adjustment of energy generated and consumed by NCES based plants, as per the said order, was to take place in the following manner:

***"Issue 12: Peak & Off peak Power, Unit to unit  
adjustment:***

Commission's views/decisions

*Since all the generators and the tied up users shall be provided with TOD meters, the adjustment of energy shall be done on slot to slot basis within monthly billing cycle as follows for Biomass and Bagasse based cogeneration:*

- (i) Peak hour generation with peak hour consumption*
- (ii) Off peak hour generation with off-peak hour consumption and the normal hour generation with normal hour consumption.*

*It should be noted that units generated during a higher tariff of ToD slot could be consumed in a lower tariff ToD slot at the option of generators/users, but the reverse would not be allowed i.e. units generated during a lower tariff ToD slot cannot be drawn by the CGP Holder during a higher tariff ToD slot. No carry over is allowed for the next month.*

*Regarding the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and*

adjust in the same way as above against peak/off-peak/normal consumptions...

...

### **10.8 Adjustment of Peak/off Peak power**

Since all the generators and the tied-up users shall be provided with ToD meters, the adjustment of energy for Biomass and bagasse based Cogeneration shall be done on slot to slot basis within monthly billing cycle as follows. **For WEGs** it shall be done within the banking period.

(i) peak hour generation with peak hour consumption.

(ii) off-peak hour generation with off-peak hour consumption

and

(iii) the normal hour generation with normal hour consumption.

The peak hour extra charges and of peak hour rebate shall be on net energy consumption after deducting captive generation during the respective peak hour block and of peak hour block.”

4. On 20.03.2009, the Commission issued a comprehensive tariff order for wind energy generators (in short “2009 tariff order”) which was applicable to WEGs commissioned on or after 19.09.2008 and having existing agreements with the appellant TANGEDCO. This order also provided for adjustment of energy generated against the energy consumed by WEGs in the following manner: -

**“8.7.3 Energy Charges**

*When the generators is synchronized with the grid, the captive / third party consumer shall be liable to pay to the distribution licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot wise. That is, peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off peak generation shall be adjusted against of peak consumption. Peak and normal generation may be adjusted against lower slot consumption.”*

5. It appears that on 10.02.2012, a wind energy generator namely M/s Arasan Syntex Limited requested the appellant TANGEDCO, by way of an

application under Right to Information Act, to clarify whether higher slot to lower slot adjustment of energy was permitted for WEGs covered under the 2006 tariff order also. In its response dated 22.02.2012, the appellant clarified that such higher to lower energy adjustment is only available for WEGs to which 2009 tariff order is applicable i.e. WEGs commissioned on or after 19.09.2008 and which have executed energy wheeling agreements as per the 2009 tariff order.

6. This response of appellant TANGEDCO was not acceptable to certain WEGs including the 1<sup>st</sup> respondent M/s Ambika Cotton Mills Limited. Accordingly, they filed writ petition bearing No.7200 of 2012 before the Hon'ble High Court of Madras seeking quashing of the said response dated 22.12.2012 of the appellant with further prayer to permit higher to lower slot energy adjustment. Vide order dated 23.07.2012, the High Court remanded the matter to the Commission for passing appropriate order clarifying the issue.

7. Accordingly, the Commission initiated *suo-motu* proceedings bearing S.M.P. No.1 of 2014 and disposed it off vide impugned order dated 31.03.2016 thereby clarifying that the units generated by WEGs during higher

tariff time of day (ToD) slot could be consumed in a lower tariff ToD slot at the option of generator / user who has entered into energy purchase agreement/ energy wheeling agreement under the Commission's order No.3 dated 15.05.2006. Thus, by the said order, the Commission extended the benefits available to WEGs covered under 2009 tariff order to the WEGs covered under 2006 tariff order also, even though the 2006 tariff order did not provide for any such benefit of adjustment of higher tariff slot units against lower tariff slot units.

8. Feeling aggrieved, the appellant TANGEDCO is before us in this appeal impugning the said order dated 31.03.2016 of the Commission.

9. We have heard learned counsel appearing for the appellant as well as the learned senior counsel appearing for the 1<sup>st</sup> respondent. We have also gone through the impugned order as well as the written submissions filed by the learned counsels.

10. We have already extracted the relevant portion of 2006 tariff order issued by the Commission hereinabove. Clause 10.8 of the said order is relevant and provides for the adjustment of energy for Biomass / Bagasse based co-gen. generators as well as WEGs within the banking period i.e. peak

hour generation with peak hour consumption, off-peak hour generation with off-peak hour consumption and normal hour generation with normal hour consumption.

11. Relevant portion of 2009 tariff order has also been quoted hereinabove which provides, *inter alia*, that peak and normal generation may be adjusted against lower slot consumption. This benefit given to generators under 2009 tariff order is not provided to the generators under 2006 tariff order.

12. It is manifest that by purported clarification in the impugned order dated 31.03.2016 to the effect that the benefit of adjustment of peak / normal generation against lower slot consumption shall be available to WEGs covered under the Commission's 2006 tariff order also, the Commission has actually added something to the 2006 tariff order which was not there. In our opinion, the said approach of the Commission is not permissible and is contrary to the settled principles of law.

13. It is elementary that a clarification in an order / statute / subordinate legislation is necessitated only when it is found to be suffering from any vagueness or ambiguity. It is not permissible to amend an order/statute/legal provision or to expand its scope in the garb of clarification. On this aspect,



we find following principles culled out by the Hon'ble Supreme Court in Sree Sankaracharya University v. Dr. Manu, 2023 SCC OnLine SC 640, very apt and are quoted hereinbelow: -

*“52. From the aforesaid authorities, the following principles could be culled out:*

*i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.*

*ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.*

**iii) An explanation/clarification may not expand or alter the scope of the original provision.**

iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

...

56. Further, merely because the subsequent Government Order has been described as a clarification/explanation or is said to have been issued following a clarification that was sought in that regard, the Court is not bound to accept that the said order is only clarificatory in nature. On an analysis of the true nature and purport of the subsequent Government Order dated 29<sup>th</sup> March, 2001, we are of the view that it is not merely clarificatory, but is a substantial amendment which seeks to

withdraw the benefit of two advance increments in favour of a certain category of lecturers. The benefit withdrawn was not anticipated under the previously existing scheme. Therefore, such an amendment cannot be given retrospective effect.”

14. Thus, it is only when the court finds it impossible to reasonably interpret a provision unless amended, that the amendment would be considered to be clarificatory in nature or a declaration of the previous law, and therefore, would be applied retrospectively.

15. In the instant case, the Commission has nowhere stated that there was any vagueness or ambiguity in 2006 tariff order. Manifestly, the said order is very clear and unambiguous. One does not require Solomon’s wisdom to interpret it. There is nothing in it to suggest that the Commission, while issuing it, intended to permit adjustment of peak / normal generation against lower slot consumption. Such conclusion is reinforced by the provisions of standard Energy Wheeling Agreement (EWA) to be executed between the appellant TANGEDCO and WEGs for wheeling of power which was to be procured in

pursuance to and in line with the said 2006 tariff order. Clause 4 of the agreement is relevant and is concluded hereinbelow:-

*“4. Adjustment of Energy Generated and Wheeled:*

- a. The Wind Energy Generator shall adjust the energy in the above-mentioned HT services on unit-to-unit basis.*
- b. The energy generated in the wind mills shall be adjusted for captive use in the above services of the Wind Energy Generator as below:*
  - (i) peak hour generation with peak hour consumption*
  - (ii) off-peak hour generation with peak hour consumption and*
  - (iii) the normal hour generation with normal hour consumption.”*

16. It is, thus, evident that the intention of the Commission was to provide energy adjustment for WEGs slot wise only i.e. peak hour generation with peak hour consumption, off-peak hour generation with peak hour

consumption and the normal hour generation with normal hour consumption. In case, the Commission intended to permit adjustment of energy generated in higher ToD slot with lower ToD slot consumption, it would have at least been stated so in the Energy Wheeling Agreement.

17. Learned counsel for the appellant emphatically harped upon the discussion of the Commission on issue No.12 in 2006 tariff order to canvass that the Commission intended to permit adjustment of units generated during higher tariff and ToD slot with units consumed in a lower tariff ToD slot for WEGs also as has been permitted to Biomass and Bagasse based plants. He referred to following paragraph in the discussion of Commission on issue No.12:-

*“Regarding the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and adjust in the same way as above against peak/off-peak/normal consumptions...”*

18. The emphasis of the learned counsel is upon the words “as above” occurring in the above noted paragraph relating to energy adjustment for

WEGs. He would argue that a meaningful interpretation of the said paragraph would reveal that the provision for energy adjustment for WEGs is same as that in respect of Biomass and Bagasse based plants i.e. energy generated in higher ToD slot can be consumed in a lower ToD slot.

19. We are unable to countenance the submissions of the learned counsel on this aspect. The 2006 tariff order provides separately for energy adjustments in case of Biomass/Bagasse based plants and WEGs. Had it been the intention of the Commission to provide adjustment of peak/off peak/normal hours in the same manner for Biomass/Bagasse based plants and WEGs, there was no need to add the above quoted paragraph related to WEGs in the discussion under issue No.12. The Commission would have specifically noted that adjustment of peak/normal generation against lower slot consumption would be available to WEGs also as has been stated specifically in relation to Biomass and Bagasse based plants. Further, the specific and unambiguous provisions of clause 10.8 of the said order also fortifies our view in this regard. Clause 4 of the standard EWA, which has been extracted hereinabove, also nullifies the contentions of the appellant on this aspect.

20. We may also note that the words “as above” appearing in above noted last paragraph of the discussion on issue No.12 are immediately preceded by the words “it is necessary to maintain a slot-to-slot banking account” and are followed by the words “against peak/off peak / normal consumption”. When we read the words “as above” in juxtaposition with the words preceding them and following them, there would be no difficulty in holding that the slot-to-slot adjustment was contemplated for WEGs without any exception. This expression “as above” need to be construed to be referring to the three categories of adjustment mentioned under first paragraph on the discussion under issue No.12. Such interpretation is consistent as well as harmonious with the subsequent clause 10.8 of the order as well as clause 4 of the standard EWA.

21. By issuing clarification with regards to clause 10.8 of 2006 tariff order in respect of the adjustment of peak / off-peak power, the Commission has actually proceeded to substantively amend the said clause of 2006 tariff order which seeks to provide some benefits to WEGs retrospectively in terms of 2009 tariff order. The impugned order of the Commission can, by no means, taken to be a clarification or explanation of 2006 tariff order. It essentially

incorporates amendment in the 2006 tariff order without actually making any change in it and therefore the same cannot be sustained.

22. We may note that the intention of the Commission in extending the benefit of adjustment under 2009 tariff order to the WEGs covered under 2006 tariff order may be bonafide and justified but the approach of the Commission in doing so is absolutely impermissible.

23. Hence, the impugned order of the Commission cannot be sustained. The same is hereby set aside to the extent assailed in this appeal. Accordingly, the appeal stands allowed.

Pronounced in open court on this the 27<sup>th</sup> day of January, 2025

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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~~REPORTABLE / NON-REPORTABLE~~

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