

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

Appeal No. 108 OF 2018

Dated: 11.09.2025

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

In the matter of:

M/s Tanot Wind Power Venture Pvt. Ltd.

Plot No.1366, Road No.45,
Jubilee Hills,
Hyderabad TG – 500033.

... Appellant

Versus

- 1. Rajasthan Electricity Regulatory Commission**
Through its Secretary,
Vidhyut Viniyamak Bhawan,
Sahakar Marg,
Near State Motor Garage, Jaipur.
- 2. State Load Despatch Centre**
Through its Managing Director,
Ajmer Road, Heerapura,
Jaipur-30204.
- 3. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.**
Through its Managing Director,
Vidyut Bhawan, Janpath,
Jaipur-302005.
- 4. Jaipur Vidyut Vitran Nigam Ltd.,**
Through its Managing Director,
Vidyut Bhawan, Jyotinagar,

Jaipur-302005.

... Respondent (s)

Counsel for the Appellant(s) : Mr. Sujeet Ghosh, Sr. Adv.
Mr. Parinay Deep Shah
Ms. Shikha Ohri
Mr. Kartik Sharma
Mr. Sayan Ghosh

Counsel for the Respondent(s) : Mr. Raj Kumar Mehta for R-1

Mr. M.G. Ramachandran, Sr. Adv.
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bandhan
Mr. Shubham Arya
Mr. Arvind Kumar Dubey for R-2&3

Ms. Preetika Dwivedi for R-4

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The present Appeal, being Appeal No. 108 of 2018, has been preferred by M/s. Tanot Wind Power Ventures Pvt. Ltd. is challenging the Order dated 29.11.2017 passed by the Rajasthan Electricity Regulatory Commission ("State Commission") in Petition No. 847 of 2016.
2. The Impugned Order arose out of a batch of petitions filed by various wind energy generators aggrieved by the frequent and arbitrary backing down instructions issued by the State Load Despatch Centre (SLDC), Respondent No.2.

Description of the Parties

3. The Appellant, M/s. Tanot Wind Power Ventures Pvt. Ltd. is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003 and has set up a wind energy-based power project of 120 MW capacity at Village Habur, Chatrail, District Jaisalmer ("Tanot Power Plant").

4. Respondent No. 1 is Rajasthan Electricity Regulatory Commission ("RERC"/ "Respondent Commission"/ "Rajasthan Commission") constituted for the State of Rajasthan, exercising jurisdiction and discharging its statutory functions under Sections 61, 62, and 86 of the Act.

5. Respondent No. 2 is the State Load Despatch Centre, constituted under Section 31 of the Act and discharges various functions as described under Section 32 of the Act.

6. Respondent No. 3 is Rajasthan Rajya Vidyut Prasaran Nigam (RRVPN), which is the transmission licensee in the state of Rajasthan carrying out the functions of intra-state transmission of electricity within the State of Rajasthan.

7. Respondent No. 4 is Jaipur Vidyut Vitran Nigam Ltd. (JVVNL), which is a company incorporated under the provisions of the Companies Act, 1956, and is a distribution licensee in the state of Rajasthan, which is an unbundled entity of the erstwhile Rajasthan State Electricity Board.

Factual Matrix of the Case

8. In exercise of powers under Section 86(1)(h) of the Electricity Act, 2003, the Rajasthan Electricity Regulatory Commission (RERC) notified the Rajasthan Electricity Grid Code Regulations, 2008 (“Grid Code Regulations 2008”), applicable to all users connected at voltage levels above 33 kV. This includes Transmission Licensees, Generating Stations, Independent Power Producers (IPPs), and Renewable Energy Power Plants connected to the State Transmission System. Accordingly, the Appellant’s 120 MW Wind Power Plant at Ramgarh, connected at 220 kV, falls within the ambit of the said Regulations.

9. Consequently, all scheduling and despatch instructions issued to the Appellant are required to be in compliance with the provisions of the Grid Code Regulations, as amended. RERC issued the First Amendment to the Grid Code Regulations on 10.06.2011.

10. Subsequently, on 18.07.2012, the Government of Rajasthan (GoR) notified the “Policy for Promoting Generation of Electricity from Wind – 2012” (“Wind Policy 2012”) to encourage wind-based generation. The said policy offered various incentives to wind energy developers and provided for the sale of power to State Discoms at preferential tariffs determined by RERC.

11. Under Clause 6.4.1 of the Wind Policy 2012, Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (RVPN) and the State Discoms were entrusted with the responsibility to augment transmission and distribution infrastructure within agreed timelines to ensure effective evacuation of wind power.

12. Thereafter, on 24.02.2014, RERC notified the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy Sources – Wind and Solar Energy) Regulations, 2014 (“RE Tariff Regulations”). Regulation 10 of the said Regulations mandates that all wind and solar power plants shall be treated as ‘Must Run’ generating stations and shall not be subject to merit order despatch principles.

13. In alignment with the Wind Policy 2012, the Rajasthan Renewable Energy Corporation, vide letters dated 11.02.2013, 19.06.2014, 04.05.2015, and 07.05.2015, granted approval to the Appellant for establishing a 120 MW wind power project. Pursuant thereto, the Appellant executed two Power Purchase Agreements (PPAs) with Jaipur Vidyut Vitran Nigam Limited (JVVNL), the Respondent Procurer, for the sale of the entire power generated from its Tanot Wind Power Plant. These comprised:

- (a) a PPA dated 27.02.2015 for 60 MW, supplemented by a Supplementary PPA dated 25.05.2015 (“PPA 1”), and
- (b) a second PPA dated 25.05.2015 for the remaining 60 MW (“PPA 2”).

14. For the purpose of power evacuation, the Appellant developed a dedicated transmission line up to the 220 kV Grid Substation at Ramgarh, with the responsibility for the downstream transmission network resting with Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (RRVPN). The project was commissioned in three phases—60 MW on 09.06.2015, 14 MW on 10.08.2015, and 46 MW on 16.12.2015—with RRVPN issuing commissioning certificates for each phase.

15. In accordance with the terms of the PPAs, the Appellant has been supplying

power to JVVNL since the respective commissioning dates and has regularly submitted day-ahead generation forecasts to the State Load Despatch Centre (SLDC) in 15-minute time blocks, to facilitate effective demand-side management by SLDC, RRVPN, and JVVNL.

16. However, despite adherence to operational and forecasting obligations, the Appellant's generation has been persistently subjected to arbitrary and unreasoned curtailment instructions issued by SLDC since September 2015. These backing-down directions, issued without justification or explanation, have materially interrupted the Appellant's generation and are alleged to be unlawful, discriminatory, and contrary to the 'Must Run' status accorded to renewable energy generators.

17. The Appellant has placed on record detailed load curtailment data evidencing that the State Load Despatch Centre (SLDC) has been routinely issuing backing down instructions to the Appellant's Wind Power Plant on a near-daily basis. These instructions, far from being occasional or event-specific, reflect a recurring and arbitrary pattern of curtailment being applied to Must-Run renewable generators, including the Appellant, without any cogent justification.

18. Notably, on 29.07.2015, the Appellant wrote to RRVPN (Respondent No.3) raising concerns regarding abnormal voltage fluctuations and repeated breakdowns on the said transmission line during peak wind season, adversely impacting power evacuation and plant viability.

19. Subsequently, on 14.09.2015, the Zonal Chief Engineer (T&C), RRVPN,

issued a thermal scanning report identifying serious faults on the 220 kV D/C Ramgarh–Dechu line, including collapsed towers, abnormal system voltage, and conductor dislocations due to defective crimping at mid-span joints.

20. Further, on 03.12.2015, the Appellant once again wrote to RVPN, urging immediate remedial actions, including:

- (a) expedited rectification of faults on the 220 kV Ramgarh–Dechu line;
- (b) installation of a reactor at the Ramgarh Substation;
- (c) early commissioning of the 400 kV Ramgarh–Bhadla line; and
- (d) timely completion of Line-In-Line-Out (LILO) at the Amarsagar–Dechu line. Despite repeated efforts by the Appellant, no effective remedial steps were undertaken by the Respondents.

21. Despite repeated representations, the Appellant continued to face systemic issues in power evacuation from its Wind Power Plant through the 220 kV Ramgarh–Dechu transmission line. On 19.02.2016, the Appellant once again apprised RVPN of persistent voltage fluctuations and frequent breakdowns on the said line, which were significantly impeding the operation of its project. The Appellant further highlighted the increasing load on the Ramgarh substation, where the total wind power capacity had risen to approximately 270 MW and was anticipated to reach 700 MW within the ensuing year.

22. In this communication, the Appellant also recalled assurances made by RVPN in a meeting held on 16.02.2016, concerning strengthening and modification of the transmission line. Pursuant thereto, on 21.03.2016, the Appellant conducted a patrolling inspection of the 220 kV Ramgarh–Dechu line

and submitted its observations to RVPN.

23. Further, by letter dated 24.04.2016, the Appellant again raised concerns regarding grid voltage instability and recurrent failures of the said line, and requested the expeditious installation of a reactor and an additional bay at the Ramgarh substation to address over-voltage and enable stabilized grid operations. On 04.05.2016, the Appellant reported a specific incident of breakdown dated 03.05.2016 due to the burning of the R Phase jumper hardware, which resulted in the jumper falling on the Y Phase conductor, causing significant loss of generation on that day.

24. Thereafter, a series of communications followed:

- a) On 11.05.2016, the Appellant wrote to RVPN regarding continued generation losses arising from SLDC's backing down instructions, line breakdowns, and over-voltage issues;
- b) On 21.05.2016, the Appellant informed RVPN that the project remained partially inoperative from 11.05.2016 to 20.05.2016 on account of the aforesaid issues, leading to significant loss of renewable generation;
- c) On 02.06.2016, the Appellant reiterated that during the entire month of May 2016, its project could not fully operate due to consistent technical and operational issues;
- d) On 09.06.2016, the Appellant escalated the matter to the Principal Secretary, Energy, Government of Rajasthan, detailing the substantial generation and revenue losses resulting from arbitrary SLDC instructions, repeated line breakdowns, and grid over-voltage.

25. In its letter to the Principal Secretary, the Appellant emphasized the statutory “Must-Run” status of wind energy projects under prevailing regulations and RVPN’s obligation to maintain a robust transmission network. Accordingly, the Appellant made the following requests:

- a) Enforcement of the “Must-Run” status in letter and spirit;
- b) Unrestricted evacuation of the entire wind capacity connected at Ramgarh;
- c) Strengthening of the reliability of the Ramgarh–Dechu line;
- d) Immediate installation of a reactor at the Ramgarh substation to mitigate over-voltage; and
- e) Compensation by way of deemed generation payment for energy lost due to the Respondents’ lapses.

26. Vide communication dated 11.06.2016, the Appellant apprised RRVPN that arbitrary instructions from SLDC during the period 01.06.2016 to 10.06.2016 had caused substantial generation loss, critically affecting the commercial viability of its project. Further, on 13.06.2016, the Appellant expressed concern over the delayed restoration of the said line, emphasizing that recurring breakdowns had curtailed its generation from 80 MW to a mere 7 MW. The limited evacuation that was permitted was through the alternate GTPL line, the majority capacity of which was already being utilized by RVUNL’s power generation project at GTPP.

27. The Appellant, therefore, requested RVPN to instruct GTPP to facilitate enhanced evacuation of wind power through the GTPL line on a temporary basis, in view of the ‘Must-Run’ status accorded to wind generators under the Wind Policy 2012 and the RE Tariff Regulations, 2014.

28. Subsequently, on 21.06.2016, the Appellant again wrote to SLDC highlighting generation losses from 11.06.2016 to 20.06.2016 due to continuous backing down instructions and persistent issues with the 220 kV transmission line. By letter dated 24.06.2016, the Appellant brought to the attention of RVPN the collapse of Tower No. 143 of the Chhatrail line, which caused the conductor to fall upon the Appellant's and Suzlon's 220 kV lines, leading to a complete outage of the wind farm.

29. Given RRVPN's inability to undertake immediate restoration, the Appellant, along with other generators, arranged for repairs at their own cost. The said line remained non-operational for approximately 48 hours from 21.06.2016. Thereafter, on 02.07.2016, the Appellant once again highlighted to RVPN that due to the persistent problems of frequent line breakdowns, over-voltage tripping, and backing down instructions, the project could not operate at full capacity for the entire month of June 2016, causing continuous generation losses.

30. Due to the continuing arbitrary instructions from SLDC, which led to significant financial losses, the Appellant, on 18.07.2016, raised a Deemed Generation Invoice for the period from FY 2015–16 up to June 2016 under the regulatory framework, which provides for such compensation in the event of unjustified curtailment of a 'Must-Run' plant.

31. Despite repeated representations to SLDC, RRVPN, and the Government of Rajasthan (GoR), no effective steps were undertaken by the Respondents to redress the voltage issues or facilitate unhindered evacuation of wind power.

Being aggrieved by such inaction and arbitrary curtailment of power, which adversely impacted both revenue and renewable generation targets, the Appellant was constrained to file a Petition, being Case No. 847 of 2016, before the Rajasthan Electricity Regulatory Commission (RERC), challenging the unlawful backing down instructions.

32. RERC, vide Order dated 08.08.2016, admitted the said Petition and issued notices to the contesting Respondents. Notably, the Petition was tagged along with other similar Petitions filed by wind and solar generators, wherein similar grievances regarding the arbitrary curtailment of 'Must-Run' projects by SLDC were under consideration.

33. In furtherance of Petition No. 847 of 2016 filed by the Appellant, the Respondents, SLDC and RVPN, filed a common reply on 07.09.2016. However, the said reply failed to substantively address the specific allegations concerning the multiple backing down instructions issued to the Appellant. Pursuant to this, the Rajasthan Electricity Regulatory Commission (RERC), through its Daily Order dated 08.09.2016, directed RVPN to furnish all relevant facts and data and instructed SLDC to comply with the provisions of the Grid Code Regulations, 2008. Despite this direction, SLDC did not adhere to the regulatory mandates.

34. SLDC and RVPN submitted an additional affidavit on 28.09.2016 containing vague data on curtailment from April to June 2016 without specific justification for the Appellant's plant. The Appellant, in its rejoinder dated 16.11.2016, highlighted this deficiency. In response, SLDC and RVPN filed a sur-rejoinder on 30.11.2016, but again failed to justify the backing down instructions, addressing only 37 of the

several hundred instances raised and omitting specific reference to the Appellant's 120 MW plant.

35. Due to continued non-compliance with RERC's directive dated 08.09.2016, the Appellant and other wind generators filed an Interlocutory Application on 06.12.2016. On 03.02.2017, the Appellant filed an affidavit using CEA data to show that thermal plants in Rajasthan were operating above technical minimums, proving selective and arbitrary curtailment of Must-Run wind generators. SLDC and RVPN responded with a common reply on 07.02.2017.

36. Thereafter, on 15.05.2017, the Appellant, with other wind generators, filed another Petition, being Petition No. 1196 of 2017, before the RERC under Section 142 of the Act, being aggrieved by SLDC's continuous and deliberate non-compliance with RERC directions issued vide Daily Order dated 08.09.2016, wherein RERC had directed SLDC to follow the provisions of Grid Code Regulation 2008 (Which provides the Must-Run status to Wind and Solar Generating Stations).

37. On 04.08.2017, SLDC and RRVN submitted a common reply in Petition No. 1196 of 2017 and also filed an additional reply in Petition No. 847 of 2016.

38. Subsequently, on 27.09.2017, the Appellant filed rejoinders in both Petitions (Nos. 847 of 2016 and 1196 of 2017), pointing out the inconsistencies in the stand taken by SLDC and RRVN with respect to the issuance of backing down instructions.

39. Thereafter, on 05.10.2017, arguments were concluded in both Petitions, and the Rajasthan Electricity Regulatory Commission (RERC) reserved the matter for orders.

40. RERC, vide the Impugned Order dated 29.11.2017, dismissed both Petitions filed by the Appellant.

41. Thus, being aggrieved by the Impugned Order dated 29.11.2017 passed by the RERC in the Petition No. 847 of 2016, the Appellant has preferred the present Appeal.

Written Submissions of the Appellant

42. The Learned Counsel appearing on behalf of the Appellant, Tanot Wind Power Venture Private Limited, submitted that the Impugned Order dated 29.11.2017 passed by the State Commission in Petition No. 847 of 2016 and connected matters is liable to be set aside on the ground that it is non-speaking, arbitrary, and devoid of any reasoning or analysis of the material placed on record.

43. The said Order, it is contended, summarily disallowed the Appellant's claims pertaining to arbitrary and frequent 'backing down' instructions issued by Respondent No. 2 – the State Load Dispatch Centre (SLDC) – in clear violation of the Rajasthan Electricity Regulatory Commission (Rajasthan Grid Code) Regulations, 2008 ("RGC 2008") and its subsequent amendments, which confer a 'must-run' status upon Renewable Energy Generators (REGs), including wind energy projects.

44. The Appellant has developed a 120 MW wind energy-based power project (Tanot WEG) in Village Chatrail, District Jaisalmer, and executed two Power Purchase Agreements (PPAs) with Respondent No. 4, Jaipur Vidyut Vitran Nigam Limited (JVVNL), dated 27.02.2015 and 25.05.2015, respectively, for 60 MW each. In terms of the PPAs, the Appellant has been injecting power into the grid through a dedicated power evacuation infrastructure connected to the Ramgarh Grid Substation of Respondent No. 3 – Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN).

45. It is submitted that the Appellant has been scrupulously adhering to day-ahead forecasting protocols in 15-minute time blocks to enable the SLDC and Discoms to effectively undertake demand-side planning. Notwithstanding the above, from September 2015 onwards, the Appellant's Project has been subjected to repeated and unjustified curtailment instructions by the SLDC, resulting in substantial generation loss.

46. These directions, it is submitted, were issued without any justification or reference to grid exigencies and were, therefore, arbitrary and discriminatory. In addition to the said instructions, the Appellant has also faced generation losses on account of over-voltage incidents and frequent breakdowns in the 220 kV Ramgarh–Dechu transmission line, which remained unaddressed by the SLDC and RVPN despite being repeatedly brought to their notice.

47. It was further contended that the Impugned Order fails to even acknowledge or engage with the extensive technical data and documentary evidence submitted

by the Appellant concerning the quantum and frequency of backing down, voltage fluctuations, and transmission line failures. The absence of any discussion or findings in this regard renders the Impugned Order arbitrary and unsustainable in law.

48. While the Appellant does not dispute the authority of the SLDC to regulate grid operations, it was emphasized that such power must be exercised judiciously, transparently, and in consonance with the statutory framework. Given the wide discretion vested in the SLDC, it is imperative that adequate checks and balances are observed to prevent the misuse of such powers to the detriment of renewable energy generators.

49. In support of its submissions, the Appellant placed reliance on the judgments of the Hon'ble Supreme Court in ***Union of India v. Essel Mining & Industries Ltd. (2005) 6 SCC 675*** and ***CCT v. Shukla & Bros. (2010) 4 SCC 785***, wherein it was held that judicial and quasi-judicial orders must be reasoned and speaking.

50. It was accordingly urged that the present Tribunal, being the final fact-finding authority, ought to examine the factual record in detail and adjudicate upon the claims that were disregarded by the State Commission.

RE: BREAKING DOWN

51. The Appellant further submitted that despite raising repeated concerns with Respondent No. 2 (SLDC) and Respondent No. 3 (RRVPN) regarding the persistent over-voltage issues and frequent breakdowns of the 220 kV Ramgarh–

Dechu transmission line, no effective remedial action was undertaken by the Respondents. Numerous correspondences were exchanged with both entities to highlight the recurring disruptions and their adverse impact on power generation, but no amicable or corrective resolution was provided.

52. The Appellant had, on multiple occasions, urged the Respondents to rectify the technical faults in the said transmission line, which continued to result in substantial generation loss.

53. Notably, the Appellant, vide its letter dated 15.07.2016, submitted invoices evidencing the financial loss incurred due to such breakdowns, amounting to a total claim of Rs. 10,21,86,849/-. It is contended that the Impugned Order is entirely silent on these critical issues, and fails to record any discussion or findings with respect to the Appellant's claims and the supporting material placed on record.

54. The Appellant further placed reliance on Regulation 4.3 of the Rajasthan Grid Code, 2008, which mandates the State Transmission Utility (RRVPN) to ensure effective power evacuation and to discharge its statutory functions under Section 39(2)(c) of the Electricity Act, 2003, including the obligation to maintain the integrity and availability of the State Transmission System.

55. The relevant para from the RERC Grid Code, 2008 is as follows:

“4.3 STU responsibility The STU shall discharge the functions assigned to it under the provisions of the Act (Section 39).

The STU shall ensure the power evacuation of the generating

stations, for supply to the entities engaged in distributing electricity and to OA consumers, exchange of power among entities, exchange of power through inter-connection with CTU including:

(i) *Coordination of REGC through SPC.*

() *Planning and co-ordination relating to intrastate transmission system with CTU, State Government, NRPC, CEA, licensee, Generating company and any other person notified by the State Government.*

() *Non-discriminatory OA to the transmission system subject to availability of adequate transmission facility for use by a licensee or a generating company or a consumer on payment of transmission charges, and other levies as may be specified by RERC.*

The STU shall not unduly discriminate against or prefer some one or a group of persons in implementing and complying with the REGC (including the scheduling of maintenance of the STS).

The STU shall also hold sub-meeting with the User to discuss individual requirements and with the group of Users for preparing proposals for SPC meeting.”

56. The relevant section of the Electricity Act, 2003, is as follows:

“39. State Transmission Utility and functions. Previous Next

(1) The State Government may notify the Board or a Government company as the State Transmission Utility: (2) The functions of the State Transmission Utility shall be—

(a) to undertake transmission of electricity through intra-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with—

- (i) Central Transmission Utility;*
- (ii) State Governments;*
- (iii) generating companies;*
- (iv) Regional Power Committees;*
- (v) Authority;*
- (vi) licensees;*
- (vii) any other person notified by the State Government in this behalf;*

(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

Section 57 (2)

Section 57. (Consumer Protection: Standards of performance of licensee):

(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(0) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission: Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(1) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.. Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: - (e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;”

57. The Appellant also relied on the judgment of this Tribunal in ***Power Transmission Corporation of Uttarakhand Limited v. Uttarakhand Electricity Regulatory Commission, 2017 SCC OnLine APTEL 15***, dated 30.01.2017, wherein it was held that State Transmission Utilities (STUs) are vested with broad statutory powers to discharge their functions effectively. The Tribunal further held that in cases of failure to comply with such obligations, the State Commission is empowered to direct the STU to compensate the affected parties. The Appellant contends that in the present case, RVPN, as the STU, failed to uphold its statutory responsibility, resulting in continuous operational and financial loss to the Appellant. The relevant excerpt of the judgment dated 30.01.20217 is as follows:

“20. Section 2(17) of the said Act defines “distribution licensee” to mean a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply. Section 42 lays down the duties of a distribution licensee. Section 42(1) says that it shall be the duty of a distribution licensee to develop

and maintain an efficient coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions of the said Act. Under Section 43(1), the distribution licensee is obliged to supply electricity on request and under Section 43(2), it is obliged to supply electric plant or electric line. Sections 43 to 46 provide for payment for such supply and equipments.

21. The Appellant is a State Transmission Utility. We must therefore go to Section 39 which relates to State Transmission Utility and its functions. Under Section 39(2)(c) the State Transmission Utility is obliged to ensure development of an efficient, coordinated and economical system of intra-State transmission for smooth flow of electricity from a generating station to the load centre. Thus the functions of the State Transmission Utility like the Appellant and a distribution licensee are similar with regard to transmission network. The legislature's intention to strengthen the hands of licensee so that it can carry out its statutory obligations is seen in Section 67 which permits the licensee to open and break up the soil, etc. to lay down or place electric lines, plants and other works. Under Section 164 of the said Act the State Government may by an order in writing inter alia for the purpose of placing of electric lines or electrical plants for transmission of electricity confer upon the licensee the powers of "a telegraph authority".

0. A perusal of all the above provisions of the said Act leads us to conclude that the Appellant Transmission Utility has wide, all

pervading powers. The Appellant is authorised to create, operate and maintain the network of transmission lines for the consumers to get supply of electricity. The Appellant is obliged under the law to provide line and plant to the consumers. The Appellant has been conferred with wide powers so that it can effectively attain its goal. The consumer is not similarly placed. Whether the responsibility of getting ROW clearance can be placed on the consumer will have to be examined against the backdrop of the above mentioned provisions of law. In our considered opinion the Appellant cannot abdicate its responsibility on the basis of a clause in the sanction letter that clearance of ROW is the consumer's responsibility. This averment made in the sanction letter is completely out of sync with the provisions of the said Act. We are unable to fasten the responsibility of clearance of ROW on M/s. Gold Plus on the basis of the said averment.

45.....We have already recorded the conclusion that the Appellant has failed to carry out its obligations under the provisions of the said Act and the UERC Regulations 2008. Thus there is a contravention of the provisions of said Act and the UERC Regulations 2008. In our opinion contravention of the provisions of the said Act and the UERC Regulations 2008 resulting in non performance of obligations by the Appellant would justify the grant of interest by the State Commission on the amount of Rs. 2.76 crores retained by the Appellant over a period of 5 years without performing its obligations. In the peculiar facts and circumstances of the present case we cannot find fault with the State Commission's order directing the Appellant to pay interest

till the works are completed.

46. It is pertinent to note that the State Commission has added a rider that the total interest shall be adjusted out of dues of M/s. Gold Plus or added to the refund to be made to M/s. Gold Plus based on the actual expenditure incurred on completion of the work. Pertinently the State Commission has directed the Appellant to submit compliance report.

47. Having applied the relevant provisions of the said Act and the relevant regulations of the UERC Regulations, 2008 to the facts of the present case, we are of the opinion that no interference is necessary with the impugned order. The State Commission has rightly taken note of the fact that the Appellant has not carried out its statutory obligation of constructing a 132 KV line though M/s. Gold Plus had paid the requisite amount. The State Commission has rightly noted that the amount of Rs. 2.42 crores paid by M/s. Gold Plus has been retained by the Appellant for over 5 years without completing the work and directed the Appellant to pay interest thereon to M/s. Gold Plus for the period subsequent to the expiry of 270 days from the date of last deposit upto the completion of the work.”

58. The Appellant submitted that the responsibility for ensuring the timely and uninterrupted evacuation of power squarely lies with Respondent No. 3, RVPN, as per the provisions of the RERC Grid Code, 2008, and Section 39 of the Electricity Act, 2003. Despite repeated representations highlighting the persistent breakdowns of the 220 kV Ramgarh–Dechu transmission line through various correspondences, RVPN and SLDC failed to undertake corrective measures or

issue proper and adequate generation schedules.

59. Furthermore, both entities neglected to acknowledge or address the grievances raised by the Appellant before the State Commission, thereby aggravating the generation losses suffered by the Project.

RE: OVER-VOLTAGE

60. The Appellant submitted that it had consistently apprised RRVPN and SLDC of severe over-voltage issues occurring on the 220 kV Ramgarh–Dechu transmission line through various written communications. Despite repeated requests, no timely or effective action was taken by the Respondents to rectify the situation.

61. Specifically, through letters dated 03.12.2015, 24.04.2016, and 09.06.2016, the Appellant had urged RRVPN to expedite the installation of a reactor at the Ramgarh substation to mitigate abnormal voltage conditions. The Appellant had also cautioned that voltage levels on the 220 kV transmission network frequently exceeded 250 kV, posing a serious threat to the safety and integrity of the Project's electrical infrastructure and personnel.

62. Despite acknowledging the need for remedial action, RVPN only commissioned the 24.85 MVAR Bus Reactor at Main Bus-I of the Ramgarh Substation on 13.04.2017, nearly two years after the first complaint. The delay, the Appellant argued, resulted in avoidable exposure to unsafe voltage levels and consequent operational losses.

63. Additionally, while RRVPN commissioned the second circuit of the 220 kV Ramgarh–Dechu line on 08.10.2016, it attributed the delay to right of way (ROW) disputes, which were ultimately resolved upon dismissal of Writ Petition No. 2214 of 2014 by the Hon'ble Rajasthan High Court on 07.10.2015.

64. The Appellant contended that RVPN's reliance on right of way (ROW) litigation to justify delays in the commissioning of the transmission infrastructure is misplaced. It was pointed out that at no point was there any stay or injunction restraining construction activities. Hence, RVPN's failure to ensure timely development of the evacuation system amounts to a clear neglect of its statutory and contractual duties.

65. Further, the Appellant submitted that under Regulation 11.4 of the Rajasthan Grid Code, both RVPN and SLDC are obligated to conduct regular load flow analyses using operational data to anticipate and address voltage fluctuations. Their failure to take proactive measures to maintain voltage within permissible limits not only violates the Grid Code but also compromises grid safety and stability. The relevant extract of Regulation 11.4 is as follows:

“11.4. Voltage Management: STU and/or SLDC shall carry out the load flow studies based on operational data from time to time to predict where the voltage problems may be encountered and to identify appropriate measures to ensure that the voltage remain within the prescribed limits. Based on such studies the SLDC shall instruct the SGS to maintain the specified voltage level at interconnecting points. SLDC and STU shall co-ordinate with the Discoms to

determine voltage level at the interconnection points.

SLDC shall continuously monitor 400kV, 220kV, 132k V voltage levels at strategic sub-stations and take

appropriate measures to control STS voltages which may include but not be limited to transformer tap changing, capacitor / reactor switching including capacitor switching by Discoms at 33 kV substations, operation of Hydro unit as synchronous condenser and use of MVAR reserves with SGS within technical limits as agreed to between STU and SGS.

RVUN and IPPs shall make available the up-to-date capability curves for all Generating Units to SLDC, as detailed in Chapter-VI, indicating restrictions if any, to allow more accurate system studies and effective operation of the STS. The CPPs shall furnish the net reactive capability available for Export to/Import from STS.

The Discoms shall participate in voltage management by providing Local VAR compensation as far as possible, in low voltage system close to load points not depending on EHV Grid for reactive support.”

66. The Appellant further submitted that under the Rajasthan Grid Code, RVPN and SLDC are mandated to coordinate with Distribution Licensees to determine and maintain appropriate voltage levels at interconnection points. However, despite being fully aware of persistent over-voltage issues, neither RVPN nor SLDC made any efforts to undertake such coordination, thereby failing in their statutory obligations. In support of the losses incurred, the Appellant referred to its letter dated 15.07.2016, wherein it submitted invoices quantifying the generation loss caused due to over-voltage conditions, amounting to Rs. 1,94,69,334/-.

RE: BACKING DOWN

67. The Appellant submitted that the Impugned Order suffers from serious procedural irregularities and lacks any substantive reasoning. Despite multiple rejoinders and detailed submissions highlighting specific instances of backing down caused by breakdowns and over-voltage issues, the State Commission failed to address or analyze these facts. The order, therefore, amounts to a non-speaking order passed without due application of mind.

68. Additionally, the Appellant contended that the Impugned Order erroneously failed to recognize Wind Energy Generators (WEGs) as Must Run Stations, as mandated by applicable regulations. The Commission also ignored the fact that backing-down instructions can only be issued under exceptional circumstances and not as a routine measure.

A. Unsubstantiated Claim Regarding Backing Down of Thermal Stations up to their technical minimum or taken to Reserve shutdown and that only then RE Generators were curtailed

69. The Appellant submitted that the State Commission failed to consider material facts demonstrating that, during periods when wind generation was curtailed by over 50%, thermal power plants across the State continued to operate at an average PLF of 82%.

70. It was further contended that curtailment instructions issued by SLDC were

not based on technical or grid security grounds but were driven by commercial considerations and other ulterior motives. The pattern of daily curtailments from FY 2015–2017, especially during high wind season, underscores the routine and arbitrary nature of SLDC's actions, which have led to significant financial and generation losses to WEGs.

71. The Appellant submitted that in the absence of any demonstrated exceptional circumstance or supporting evidence, the Commission erred in simply accepting the SLDC's contentions. As per regulatory mandate, curtailment, if any, must first be imposed on conventional power plants before being applied to renewable generators in exceptional situations.

72. Lastly, the Appellant pointed out that SLDC has failed to disclose comprehensive data regarding thermal plants operating at their technical minimums. While some data was furnished (Affidavit dated 13.03.2019), SLDC selectively omitted details for key stations like Kalisindh, Kota, and Ramgarh, undermining the credibility of their claims on grid security and technical minimum requirements.

B. Unwarranted Curtailment of Wind Generators Despite High Demand

73. The Appellant submitted that SLDC issued curtailment instructions to wind power generators even during periods of high demand in Rajasthan, with peak loads reaching approximately 8500 MW, and without any corresponding major transmission line outages. These actions highlight that curtailments were not

necessitated by grid constraints but were aimed at minimizing deviations in the Northern Region (NR) schedule to avoid Unscheduled Interchange (UI) penalties.

74. It was further contended that SLDC, to manage under-drawl conditions in the NR grid and avoid UI charges, chose to back down wind power instead of thermal or gas-based generation, despite the availability of sufficient state generation margins. This selective curtailment was evidently driven by commercial and economic considerations, particularly since the applicable PPAs do not provide for compensation to renewable generators in such scenarios.

C. Incomplete and Deficient Data Submitted by SLDC

75. It is submitted that the data furnished by SLDC throughout the Petition proceedings is incomplete and selectively curated to support their position. To substantiate this, the Appellant conducted a comparison of the backing down instructions recorded at each of its generating stations between March 2016 and June 2017 with the data submitted by the Respondents. This comparative analysis revealed several discrepancies, where numerous instances of actual backing down were omitted in SLDC's records despite being documented by the Appellant.

76. The Appellant highlighted these inconsistencies before the State Commission and submitted a summary sheet along with a detailed comparative analysis. A review of this summary clearly shows a significant number of unreported or excluded curtailment events. Such selective reporting by SLDC/RVPN, in the absence of any explanation for these omissions, amounts to misrepresentation of facts and misleading the State Commission.

77. The Appellant submits that this cherry-picked and incomplete data severely undermines the credibility of the Respondents' claims and further strengthens the Appellant's case of arbitrary and unjustified curtailment.

D. No Grid Security Concerns Justifying Curtailment

78. It is submitted that under Regulation 7.8.1 of the Rajasthan Grid Code, 2008, wind and solar power generators are accorded "Must-Run" status, mandating the SLDC to make all efforts to ensure full evacuation of available renewable power. This provision imposes a clear statutory obligation on SLDC to prioritize the evacuation of wind power without unwarranted curtailment.

79. Further, Clause 6.4.1 of the Wind Policy 2012 casts an express duty on all Distribution Licensees and RVPN to ensure the necessary transmission and distribution infrastructure for wind power evacuation. Despite these binding provisions, the Respondents have failed to adhere to their statutory obligations, resulting in frequent and arbitrary curtailment of the Appellant's generation, in contravention of the Must-Run status. The relevant regulation of RERC Grid Code, 2008 1st Amendment (1st Amendment Regulation 2011) dated 10.06.2011, is as follows:

"Regulation 7.8.1 to the RERC Grid Code mandating SLDC to make all efforts to evacuate the available solar and wind power and treat as a must-run station after taking into consideration the storage capacity, grid security."

80. The State Commission failed to even acknowledge the violation of Regulation 7.8.1 of the Rajasthan Electricity Grid Code, 2008 (as amended), which clearly mandates SLDC to treat wind and solar power as “Must-Run” and to ensure full evacuation. This statutory obligation has been reiterated in Regulation 10 of the RERC Tariff Regulations for Renewable Energy Sources, 2014, and Clause 4.1 of the PPA executed between Tanot and JVVNL, which lays down the principles of merit order dispatch. The only permissible exception to curtail Must-Run generation is in the interest of grid security during abnormal and exceptional situations.

81. However, the State Commission has overlooked that the reasons cited by SLDC for issuing backing down instructions are vague, generic, and do not meet the threshold of ‘abnormal or exceptional circumstances’ as envisaged under Regulation 7.8.1. Hence, the Commission has failed to assess the legality and factual justification of the SLDC’s actions in light of the binding regulatory framework.

E. NSEFI Judgment: Curtailment of Renewable Energy Not Justified on Grounds other than of Grid Security

82. The Counsel placed reliance on the judgment dated 02.08.2021 passed by this Tribunal in Appeal No. 197 of 2019 – National Solar Energy Federation of India v. Tamil Nadu Electricity Regulatory Commission & Ors. In the said decision, this Tribunal categorically laid down guiding principles for curtailment of Renewable Energy (RE) generation, clarifying that certain factors cannot be considered valid grounds under the pretext of grid security. The Tribunal

emphasized that curtailments must strictly comply with regulatory norms and cannot be driven by commercial or extraneous considerations. This precedent squarely applies to the present case, where curtailments of the Appellant's wind energy generation were made without substantiating any exceptional or abnormal circumstances threatening grid security. The relevant paragraphs are as follows:

"135.....

(i) APPEAL NO.197 OF 2019 For Future, any curtailment of Renewable Energy shall not be considered as meant for grid security if the backing down instruction were given under following conditions:

- a) System Frequency is in the band of 49.90Hz-50.05Hz*
- b) Voltages level is between: 380kV to 420kV for 400kV systems & 198kV to 245kV for 220kV systems*
- c) No network overloading issues or transmission constraints*
- d) Margins are available for backing down from conventional energy sources*
- e) State is overdrawing from the grid or State is drawing from grid on short-term basis from Power Exchange or other sources simultaneously backing down power from intrastate conventional or non-conventional sources.*

(ii)As a deterrent, the curtailment of Renewable Energy for the reasons other than grid security shall be compensated at PPA tariff in future. The compensation shall be based on the methodology adopted in the POSOCO report. POSOCO is directed to keep the report on its website.

(iii)The State Load Dispatch Centre (SLDC) shall submit a monthly

report to the State Commission with detailed reasons for any backing down instructions issued to solar power plants.”

83. The Respondents, in their Reply in Petition No. 786 of 2016 filed by M/s. Renew Wind Energy, submitted Annexure C titled “Details of Backing Down of Wind Power Generation qua Other Generations for the Period March 2016–June 2017.” This document includes specific Load Dispatch (LD) messages, dates, percentage of backdown, and corresponding grid frequencies. A plain reading of Annexure C clearly demonstrates that the Appellant’s Wind Energy Generators (WEGs) were subjected to arbitrary curtailments even when the grid frequency was within the optimal operational band of 49.90–50.05 Hz, as prescribed under Regulation 6.6.4.1 of the RERC Grid Code 2008. The Appellant consequently suffered significant generation losses without any legitimate grid security concerns.

84. Further, the data indicate that SLDC issued backdown instructions to WEGs even at frequencies as low as 49.85 Hz—actions which are not only unjustified but could also compromise grid stability, in contravention of the Indian Electricity Grid Code. This makes it evident that the backing down was not necessitated by any grid-related exigency, but rather executed in an arbitrary and potentially unsafe manner.

85. It is submitted that analysis of the frequency and RE curtailment instructions in Annexure C titled *Copy of details of backing down of wind power generation qua other generations for the period March 2016- June 2017* shows the following:

Total Blocks	No. of Blocks for which frequency (>50.05 Hz)	% of blocks out of total blocks
72	15	0.2

86. It is submitted that out of 72 total curtailed time blocks, only 15 blocks (i.e., 0.2%) had grid frequency above 50.05 Hz, which alone could justify curtailment from a grid security standpoint. Therefore, the overwhelming majority of curtailments imposed by SLDC were not related to grid safety and were instead driven by economic considerations. Such curtailments are in blatant violation of both statutory provisions and the contractual obligations under the PPA, severely affecting the operational viability of the Appellant's wind energy projects.

87. The Appellant has consistently submitted generation loss data to the Respondents since the commissioning of the project. In the absence of any response or redressal, the Appellant raised invoices to claim compensation for deemed generation losses. Notably, the Appellant also issued a letter dated 18.07.2016 enclosing an invoice for generation loss on account of forced backdown.

88. Additionally, a comprehensive table documenting repeated load curtailments between 13.06.2015 and 17.06.2016 was filed before the State Commission. Despite being part of the record, the Commission failed to consider or address these critical documents, demonstrating a clear non-application of mind in the Impugned Order.

89. It is submitted that backing down without having cogent reasons is violative

of the concept of “Must Run” status given to solar projects. Relevant extracts upholding the importance of “Must Run” in the NSEFI judgment are as follows:

“133. The investments made in establishing solar projects, and the solar tariffs so determined, was premised on Must Run status as contemplated in the regulations framed under Act and the provisions in energy purchase agreement. If must run status is not adhered to by the Respondent TANGEDCO and SLDC in violation of law, the members of the Appellant association would be deprived of recovery of legitimate tariff. As solar power tariff is single part and it is predominantly fixed cost in nature, unauthorised curtailment will ultimately result in solar generators failing to repay their loans. If such actions are not penalised, the unauthorised curtailment will go unabated jeopardising the whole objective and intent of the Act. This conduct on the part of the State Load Despatch Centre which is public office cannot be said to be bona-fide and genuine. Therefore, we are of the view that since misfeasance has been established against TANGEDCO and TNSLDC, a statutory body under the Act, the Appellant is entitled to claim for compensation from TNSLDC and TANGEDCO. Both these entities shall jointly pay the compensation to the members of the Appellant Association.”

90. It is submitted that the Appellant, vide letter dated 15.07.2016 raised invoices amounting to ₹5,63,43,924 towards compensation for generation losses suffered due to arbitrary and unjustified backing down instructions issued by the SLDC. The said losses were caused solely due to the unlawful curtailment of

power, which was beyond the control of the Appellant.

91. It is respectfully submitted that the Appellant cannot be made to bear the financial burden resulting from the actions of the SLDC, and hence, compensation must be awarded by the party in breach.

92. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243***, wherein it was held that the State is liable to compensate citizens for losses caused due to arbitrary or ultra vires actions of its employees. The Court affirmed that even bona fide but unlawful actions of public authorities, undertaken without legal sanction, would give rise to liability for compensation.

93. Further reliance is placed on ***Union of India v. United India Insurance Co. Ltd. (1997) 8 SCC 683***, where the Hon'ble Supreme Court held that a claim for compensation is maintainable for non-exercise of statutory duties resulting in damage, and public authorities can be held liable for negligence or breach of statutory obligations. The Court observed that an award can be passed against public agencies, including the Railways, where their negligence is established in composite or joint tortious acts.

94. Accordingly, the Respondents' failure to uphold their statutory and contractual duties, leading to generation losses for the Appellant, squarely attracts liability for compensation.

95. It is submitted that the Electricity Act 2003 and the National Tariff Policy

explicitly mandate the promotion of renewable energy generation. Granting Must Run status to renewable energy sources aligns with this objective, ensuring their prioritization and seamless integration into the grid. The relevant excerpts are extracted as follows:

Electricity Act, 2003:

“Section 61. (Tariff regulations):

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

Section 86. (Functions of State Commission):

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.”

National Tariff Policy:

“4.0 OBJECTIVES OF THE POLICY

(e) Promote generation of electricity from Renewable sources;”

96. It is submitted that the Hon’ble Supreme Court in ***Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission, (2015) 12 SCC 611***, has categorically held that the intent behind Section 86(1)(e) of the Electricity Act, 2003 is to advance the objectives of Article 21 of the Constitution, read in conjunction with the fundamental duty under Article 51A(g) — to protect and improve the natural environment. Thus, promotion and integration of renewable energy sources, such as wind and solar, is a constitutional and statutory mandate.

97. In light of the above, the repeated curtailments imposed by the Respondents upon the Appellant's wind generation units are not only arbitrary and unlawful but also in violation of the legislative purpose behind Section 86(1)(e). The curtailment instructions were not issued for reasons of grid security but were instead driven by economic and commercial considerations, which is impermissible under the applicable legal framework.

Written Submissions of the Respondent Nos. 2 and 3, Rajasthan State Load Despatch Centre (SLDC) and Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL)

98. The relevant clauses of the Power Purchase Agreement dated 27.02.2015 between the Appellant and the Jaipur Vidyut Vitran Nigam Limited are as under:

*“4. Interconnection, Delivery Point, Metering & Other Charges
(Appeal, Page 198)*

4.1 Grid Interfacing

.....

*XV) RVPN /Discom(s) shall evacuate all the delivered energy. However, the State Load Dispatch Centre of RVPN looking to system requirement may direct the power Producer to temporarily curtail or stop its electricity generation without any liability on account of:
(Appeal, Page 200)*

Inspection/repair/maintenance of RVPN and/or Discom Grid System and associated equipment or under forced outage conditions:

*Safety of equipment and personnel of the RVPN and/or Discom(s).
Any other technical requirement to maintain the Grid discipline and security.*

XVI) In the event of abnormal voltage conditions, RVPN/Discom will have right to ask to the Power Producer/Developer for regulating the reactive power generated by the Wind Generator as per system requirement.

XVII) RVPN/Discom shall disconnect the interconnection of Power Plant from State Grid/Distribution System in case of default of the Power Producer to comply with any of the provisions of PPA including technical parameters of supply as prescribed in Annexure 'A' of the PPA and such disconnection will continue till default continues.

Merit Order Dispatch

The power plants commissioned under the policy would not be subject to Merit Order Dispatch regulations."

STATUS OF SLDC AND ITS FUNCTIONS AND OBLIGATIONS

99. The Counsel submitted that the SLDC, being a statutory authority under the Electricity Act, 2003, is entrusted with the real-time operation and security of the State grid. As per Section 33(3) of the Act, the directions issued by SLDC for maintaining grid stability are required to be implemented immediately and cannot be reversed post facto. Any disputes relating to such directions may be referred to the State Commission under Section 33(4) for future adjudication, but not for

retrospective interference.

100. The SLDC exercises its operational powers independently and without prior consultation, based on dynamic and instantaneous grid conditions. The decision to issue backing down instructions—whether in cases of under-drawal (leading to increased frequency) or over-drawal (resulting in decreased frequency)—is taken to maintain grid equilibrium and ensure uninterrupted power supply.

101. SLDC must also ensure that conventional thermal generators are not brought below their technical minimum generation thresholds, as such shutdowns can adversely affect their availability when demand surges, particularly if wind generation becomes unavailable due to fluctuating wind conditions. It is denied that any backing down instructions were issued arbitrarily or with an intent to favor conventional generators.

102. The SLDC has never disputed the “Must Run” status of renewable energy generators under the RERC regulations. However, this status is subject to grid security requirements, and in instances where system stability was at risk, temporary curtailment became necessary. It is respectfully submitted that the Appellant’s contention regarding economic motivations and discrimination is unfounded and contrary to the operational realities of grid management.

103. The Counsel further submitted that under Section 32 of the Electricity Act, 2003, the SLDC is entrusted with scheduling and dispatch functions, which are to be exercised in line with the contractual terms between generating companies and distribution licensees. As per Article 4.1 of the Power Purchase Agreement (PPA)

dated 27.02.2015, while the Appellant's project is accorded "Must Run" status, the same is subject to curtailment under specified circumstances, particularly in the interest of grid security.

104. It is incorrect for the Appellant to contend that wind power generators with Must Run status can never be subject to backing down. Grid security considerations are complex, dependent on real-time dynamic conditions, and cannot be governed by any rigid principle mandating that only conventional generators must first be curtailed before renewable generators are affected.

105. SLDC submits that all backing down instructions issued to the Appellant between March 2016 and June 2016 were made fairly and without discrimination, solely for grid safety. Thermal generating stations in Rajasthan have technical minimum operating limits. Backing them down beyond such thresholds causes operational inefficiencies and delays in restarting generation, which poses serious risks in scenarios where wind generation cannot be relied upon due to its seasonal and variable nature.

106. Further, in all instances of under-drawal leading to frequency increase, SLDC first issued instructions to thermal generators. Only when no further downward regulation was feasible—including surrendering central generating station (CGS) power—were instructions issued to wind generators, and even then, only as a last resort.

107. Conversely, when load demand begins to rise, non-conventional sources like wind power are prioritized for immediate ramp-up. In support of these

submissions, the Respondents rely on the tabulated record of backing down events concerning the Appellant's wind project during March 2016 to June 2016, as extracted from the Appellant's own submissions dated 10.01.2025. This data substantiates that SLDC actions were lawful, technically justified, and consistent with the regulatory and contractual framework.

108. The backing down on conventional generators has been imposed in accordance with the applicable Regulations notified by the State Commission as well as the Technical minimum Requirement, as certified and stated by the individual generator giving due regard to the configuration of the generating units, the type of fuel used - lignite etc.:

(a) As per the Scheduling and Dispatch Procedure under RERC (Intra State ABT) Regulations, 2006, the backing down instructions in respect of the State-Owned Generating Stations of Suratgarh Thermal Power Station (STPS) and Kota Super Thermal Power Station (KTPS) is as under:

9. Backing Down of Generating Units

The SLDC instructions for backing down of generation of RVUN generating units except gas based power stations shall be limited to following percentage of the installed capacity in order of merit without requiring oil support.

i. STPS and KTPS (210 MW & 195 MW units) - 20-25%

ii. KTPS (110 MW units) - 15%

109. Further, the Counsel submits that specific technical minimum thresholds apply to thermal generating stations operating in Rajasthan. As per the Generator Details in Format AS1 of the Detailed Procedure for Ancillary Services Operations

of NLDC, New Delhi, the technical minimums are as follows:

RajWest Lignite Power Plant (8x135 MW): 94.5 MW per unit

NLC Barsingar Lignite Plant (2x125 MW): 90 MW per unit

Adani Power Rajasthan – Kawai TPP (2x660 MW): 864 MW in aggregate.

110. Accordingly, SLDC could only curtail these thermal stations down to the specified technical minimums and no further.

111. It is further submitted that the Appellant's reliance on the Central Electricity Regulatory Commission's Fourth Amendment to the Indian Electricity Grid Code, notified on 29.04.2016, which prescribes a technical minimum operation at 55% of installed capacity (Regulation 6.3B), is misplaced. This provision was not in force during the period under dispute—September 2015 to June 2016—as it came into effect only from 15.05.2017.

112. Respondents reiterate that power from renewable sources like wind is inherently variable and unpredictable throughout the day. Therefore, the “Must Run” status of such projects cannot be implemented inflexibly at all times. SLDC cannot be compelled to direct thermal generators to operate below their technical minimum levels—doing so would risk power unavailability in cases where wind projects cannot generate due to low wind velocity. A balanced and pragmatic approach must be followed, consistent with SLDC's responsibilities under Section 32 of the Electricity Act, 2003, along with provisions of the Indian Electricity Grid Code and the Rajasthan Grid Code.

113. Counsel submitted that the SLDC, as the apex body responsible for real-

time grid operations in the State, cannot refrain from issuing backing down instructions to wind generators when such action is necessary for grid security. A failure to back down under such circumstances would result in dereliction of SLDC's statutory functions under the Electricity Act, 2003, including:

- Ensuring integrated operation of the State's power system;
- Undertaking optimal scheduling and despatch of power within the State;
- Monitoring and supervising grid operations in real time;
- Exercising control over the intra-State transmission system;
- Securing economic and safe grid operation in compliance with Grid Standards and the State Grid Code; and
- Ultimately, protecting consumer interests.

114. It is further submitted that SLDC placed a detailed statement before the State Commission, documenting the instances of backing down, corresponding grid frequencies, and instructions issued to conventional generators. The State Commission, after reviewing the complete data on record, found no evidence of arbitrariness or discriminatory conduct in the SLDC's curtailment decisions.

115. In addition to the above and pursuant to the direction of this Tribunal on 18.03.2019, at the behest of Tanot, an opportunity was granted to the officials from Tanot to verify the records available at the office of the SLDC, as under:

“At the request of the learned senior council appearing for the Appellant two weeks time is granted to go through the records available at the office of SLDC/the Respondent No. 3. After verification of records, the learned senior counsel appearing for the

Appellant is permitted to file additional reply to the Affidavit dated 13.03.2019 filed by the learned counsel appearing for the Respondent No. 2 and 3 i.e. on or before 10.04.2019 after duly servicing copy to the other side.”

116. On 09.05.2019, the representative from the Appellant had examined the documents at the SLDC office. The Appellant has not filed any affidavit on this aspect despite an opportunity being given to it in the said daily order. Therefore, there cannot be any issue with the veracity/authenticity of the documents.

Re: VERACITY OF THE CLAIM OF THE APPELLANT

117. The Appellant’s claim of being backed down on several days is factually incorrect. As per records, there were multiple instances where no backing down instructions were issued at all. Further, in instances where curtailment was implemented, the conventional generators were backed down first, and only thereafter were the wind generators, including the Appellant, subject to curtailment—strictly based on grid requirements.

118. With regard to the ‘Comparative Analysis’ presented by the Appellant (Tanot Wind Power Ventures Pvt. Ltd.), the Respondents rely on the Tabulated Statement at pages 636–638 of Compilation-III, which reflects the accurate position.

119. It is submitted that this data conclusively demonstrates that many of the Appellant’s claims regarding curtailment are unsupported by SLDC’s actual instructions. The SLDC had duly submitted before the State Commission all

relevant records regarding curtailment, including those maintained in official registers. In response to an RTI Application dated 13.06.2016 filed by Shri Pavan Kumar Gupta, SLDC produced certified copies of curtailment/logbook entries (555 pages in total) vide letter no. 2888 dated 30.09.2016, covering January 2015 to May 2016.

120. During the proceedings before the State Commission, the original SLDC Register for the relevant period was presented. Detailed records of scheduling and curtailment were made available for inspection by all stakeholders, including 14 participating entities and approximately 19 wind power developers. The State Commission, after due consideration of these records—including the sample pages from SLDC's Register (Pages 37–48 of Additional Affidavit dated 13.03.2019)—found that SLDC's actions were consistent with the applicable regulatory framework and devoid of arbitrariness.

121. There has been a significant reduction in the backing down instances of the wind power generators in the State of Rajasthan. A summary of the recent backing down instances from September 2022 to June 2024 are as under:

No. OF Curtailment Messages given to RE (Wind) Generators by LD due to System Security and System Constraint(Sept-2022 to June-2024)		
S.No.	Month	Total (No.of Back down/Curtailment Messages)
8	Sep-22	1
9	Oct-22	---
10	Nov-22	---
11	Dec-22	2
12	Jan-23	1
13	Feb-23	---
14	Mar-23	---
15	Apr-23	1
16	May-23	4
17	Jun-23	15
18	Jul-23	4
19	Aug-23	---
20	Sep-23	1
21	Oct-23	1
22	Nov-23	---
23	Dec-23	---
24	Jan-24	---
25	Feb-24	4
26	Mar-24	1
27	Apr-24	1
28	May-24	1
29	Jun-24	6

122. It is also relevant that the Appeal against the Impugned Order on the aspect of backing down has been filed only by the Appellant herein and none of the other developers.

MONETARY CLAIMS MADE BY THE APPELLANT UNDER PRAYER C OF THE PETITION AND PRAYER D OF THE APPEAL

123. The actions of the SLDC were neither arbitrary nor in violation of law. All backing down instructions were issued in accordance with Sections 32 and 33 of the Electricity Act, 2003, based solely on technical and operational grounds concerning grid security. There is no evidence of any extraneous, economic, or commercial motive behind the curtailment of wind power, and hence, the Appellant

has no legal basis to claim monetary compensation for alleged generation loss.

124. Without prejudice, it is further submitted that Section 33(4) of the Electricity Act does not contemplate any liability for compensation arising from statutory directions issued by the SLDC under Sections 32 and 33. The State Commission's jurisdiction under this provision is prospective and regulatory in nature—it cannot undo or compensate for past actions that were legally implemented.

125. In the absence of any willful misconduct, mala fide intent, or favoritism shown to conventional generators, no claim in tort can be sustained against SLDC. The SLDC functions under statutory authority and not under any contractual obligation to the Appellant; hence, no remedy can be sought under the Indian Contract Act, 1872. The claim for deemed generation compensation against Respondents No. 2 and 3 is therefore wholly misconceived, as such a remedy is not envisaged under the statutory scheme of the Electricity Act for actions taken in legitimate discharge of SLDC's statutory functions.

126. Finally, the Appellant's reliance on the judgment of this Tribunal in ***National Solar Energy Federation of India v. Tamil Nadu Electricity Regulatory Commission (Appeal No. 197 of 2019)*** is misplaced. That case involved specific findings of collusion and mala fide conduct by the Tamil Nadu Discom and SLDC, which were flagged as suspicious by the State Commission. No such findings or circumstances exist in the present matter.

Re: Non-availability of Transmission System

127. The reliefs sought by the Appellant under prayers (d) and (e) in their original petition before the State Commission fall outside the jurisdiction of Section 33(4) of the Electricity Act, 2003. These issues, including the reference to the Thermal Scanning Report, were not adjudicated upon in the Impugned Order and lie beyond the scope of SLDC's statutory functions under the said provision.

128. Regarding power evacuation infrastructure, Respondents clarify that the 220kV connectivity for the Appellant's wind power project was granted in line with the Wind Policy, 2012, and subject to augmentation of the transmission system. Specific interconnection permissions were issued by RVPN vide letters dated 08.06.2015 (60 MW), 10.08.2015 (14 MW), and 30.11.2015 (46 MW), cumulatively approving 120 MW capacity. These approvals were based on a power evacuation plan sanctioned by the Chief Engineer (PPM), RVPN, on 15.07.2014, for a total of 150 MW. The connectivity was conditional upon the commissioning of the 400kV Ramgarh GSS at 220kV voltage level and new transmission lines therefrom.

129. Until such conditions are fulfilled, the Appellant's claim for complete transmission availability is untenable. RVPN took all reasonable measures to strengthen the system, and any delays were due to external issues such as Right of Way (RoW) constraints, which were beyond RVPN's control.

130. Respondents further submit that SLDC's backing down directions were also necessitated by the need to protect the transmission network. At the time, one circuit of the 220kV D/C Ramgarh–Dechu line was operational and capable of evacuating the Appellant's phased capacity of 120 MW. The second circuit of the said line was commissioned subsequently on 08.10.2016. Additionally, to manage

overvoltage and stabilize the grid, a 24.85 MVAR Bus Reactor was installed at 220kV Main Bus-I on 13.04.2017.

131. The delay in commissioning the second circuit of the 220kV Ramgarh–Dechu transmission line was entirely attributable to Right of Way (RoW) issues and not due to any inaction on the part of RVPN. The following sequence of events evidences this:

(a) Possession of the land required for the 400kV Grid Substation (GSS) at Ramgarh, including the boundary wall, was handed over to RVPN on 04.05.2011.

(b) Post possession, certain cultivators challenged the acquisition before the Additional Commissioner, Revenue Appellate Authority, Jaisalmer. The Authority ruled in favour of RVPN by order dated 02.11.2011.

(c) The cultivators then filed an appeal before the Rajasthan Revenue Board, which also upheld RVPN's case on 26.09.2013.

(d) Subsequently, a Civil Writ Petition (No. 2214/2014) was filed by the cultivators before the Hon'ble Rajasthan High Court at Jodhpur.

(e) It was only after the Hon'ble High Court dismissed the writ petition on 07.10.2015 that RVPN was finally in a position to commence construction of the transmission line and bay at the 400kV Ramgarh GSS.

Thus, the delay was due to protracted legal proceedings relating to land acquisition and clearly beyond the control of RVPN.

Written Submissions of the Respondent No. 4, Jaipur Vidyut Vitran Nigam Ltd. (JVVNL)

132. Respondent No. 4 submits that the directions to back down generation were issued by the SLDC purely in the interest of grid security and stability. The SLDC clarified that:

- (a) back down instructions were issued for maintaining system stability;
- (b) at the relevant time, the demand in the State of Rajasthan was declining, resulting in an under-drawal condition;
- (c) due to overloading of transmission lines, wind generators were instructed to reduce generation to keep the grid within safe operational limits; and
- (d) initial backing down directions were issued to conventional generators, and when the under-drawal condition persisted, similar instructions were extended to the Appellant and other wind generators.

133. These directions were duly supported by relevant system data and documentation.

134. It is further submitted that the Power Purchase Agreement (PPA) dated 27.02.2015 executed between the Appellant and the present Respondent contains no provision for “deemed generation.” Accordingly, since the curtailment was on the directions of SLDC, the Respondent cannot be held liable for any deemed generation compensation.

135. Relevant clauses of the PPA are also relied upon:

- i. Clause 4.1(xv) authorizes SLDC to instruct the producer to curtail or stop generation temporarily without any liability, in the following situations:
 - (a) Inspection, repair, maintenance, or forced outage of the RVPN/DISCOM

grid system;

(b) Safety concerns for equipment or personnel of RVPN/DISCOM;

(c) Any technical requirement necessary to maintain grid discipline and security.

- ii. Clause 4(xvi) provides that in the event of abnormal voltage conditions, RVPN/DISCOM has the right to instruct the Developer to regulate reactive power generation from the wind generator based on system requirements.

136. In view of the above contractual terms and the operational exigencies cited by SLDC, the Respondent denies any liability to compensate the Appellant for the alleged loss of generation. Section 33 of the Electricity Act 2013 is as follows:

“Section 33. (Compliance of directions): ---

The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State

Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Despatch Centre under sub-section (1).

The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State

Commission for decision: Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.

If any licensee, generating company or any other person fails to comply with the directions issued under sub-section(1), he shall be liable to a penalty not exceeding rupees five lacs”

137. Respondent No. 4 further relies on Regulation 7.8.1 of the RERC (Renewable Energy Grid Connectivity and Evacuation) Regulations, 2008, which stipulates that while SLDC shall endeavor to evacuate all available wind power and treat such sources as must-run, it may issue backing down instructions to wind generators based on grid security concerns or to ensure safety of equipment and personnel. Compliance with such directions is mandatory for the generator.

138. It is submitted that there has been no breach on the part of the Respondent with respect to the provisions of the PPA, RERC Grid Code, or the Renewable Energy Tariff Regulations, 2014. SLDC functions as a statutory body and is authorized to act in the broader public interest concerning scheduling and dispatch. As such, the present Respondent is obligated to adhere to directions issued by SLDC.

139. Under the terms of the PPA executed between the Appellant's and the respective DISCOMs, while wind generators are granted must-run status, the injection of power is subject to backing down in specified scenarios. Hence, the Appellant's contention that wind generators with must-run status can never be subject to curtailment is misconceived and contrary to both regulatory provisions

and contractual terms.

140. Regarding the claim for deemed fixed charges during the period of backing down, Respondent No. 4 submits that the same must be assessed strictly in accordance with the PPA terms. As reiterated earlier, the PPA contains no clause for deemed generation compensation. In support of this position, reliance is placed on the decision of the Gujarat Electricity Regulatory Commission (Order No. 2 of 2016), wherein it was clearly held that wind generation cannot be treated as deemed generation and that no payment is due from the distribution licensees for curtailed energy. In light of the above, Respondent No. 4 maintains that the claims raised by the Appellant are devoid of merit.

141. Respondent No. 4 further submits that the Commission has rightly held that the backing down instructions issued by SLDC were not arbitrary, as alleged by the Appellant. These directions were issued strictly for operational reasons, in line with the responsibilities entrusted to SLDC under Section 32 of the Electricity Act, 2003, and in accordance with the RERC Grid Code. As a real-time system operator, SLDC is required to take prompt decisions based on prevailing demand, generation availability, and grid stability for each time block.

142. The Commission further recorded that no evidence was furnished by the Appellant to establish that the said directions were arbitrary or issued with any extraneous motive. Accordingly, it is reiterated that there is no violation on the part of the Respondents of Regulation 7.8.1 of the RERC Grid Code or Regulation 10(1) of the Renewable Energy Tariff Regulations, 2014.

143. In the absence of any provision for deemed generation in the PPA and in view of the lawful and justified curtailment by SLDC, no compensation towards deemed generation loss is payable to the Appellant.

Analysis and Conclusion

144. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Although the Appellant has raised many questions of law, we will focus on the following questions, which shall cover all the issues:

- 1. Whether the curtailment instructions (backing down) issued by SLDCs are as per prevailing Law and Regulations, if not, whether the compensation can be granted to the Appellant?***
- 2. Whether the loss of generation suffered by Appellant due to curtailments owing to high voltage and non-availability of the transmission system has been dealt with by the Commission?***
- 3. Whether the impugned order issued by the Commission is a speaking and complete order and/ or deciding the issue just based on “no malafide”, the Commission made an error?***

145. We have examined the submission of the Appellant and the response of the Respondents. After careful examination of the impugned order of the Commission and the judgment of this Tribunal in a similar case of solar generation in Tamil Nadu, we find that the Commission, while disposing of the petition in batches of

petitions, has not dealt with the Appellant's issues, which are related to curtailment and transmission outage. While dealing with the issue raised by the petitioner before the Commission, instead of casually rejecting the claim of the Appellant, the state Commission must have kept in mind the following provision of law related to renewable energy.

Law and Regulatory provisions in regards to Renewable generation:

Electricity Act

Section 3. (National Electricity Policy and Plan) --- (1) *The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based **on optimal utilisation** of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy*

Section 61. (Tariff regulations):

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

Section 86 (Functions of State Commission):

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the

grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

Electricity Policy

5.12 COGENERATION AND NON-CONVENTIONAL ENERGY SOURCES

5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.

National Tariff Policy:

4.0 OBJECTIVES OF THE POLICY

The objectives of this tariff policy are to:

(e) Promote generation of electricity from Renewable sources

146. Therefore, as per the mandate of the Electricity Act, 2003, and the policies

framed thereunder, the State Electricity Regulatory Commissions are given the responsibility of promoting the energy generation from Renewables (reference section 61 and section 86 as quoted above).

147. Further, as per Regulation 10 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2014 (RE Tariff Regulations), it is provided that all wind and solar Power Plants shall be treated as 'Must Run' Power Plants and shall not be subjected to 'merit order dispatch' principles.

148. The aforesaid regulatory/statutory provisions give effect to and/or implement the mandate of Section 61(h) and Section 86(1)(e) of the Act.

149. Further, the State Grid Code and PPA provide as under:

- Regulation 7.8.1 of the Rajasthan Electricity Regulatory Commission (REGC) Regulations 2008 provides that SLDC shall make efforts to evacuate available wind power and treat it as a must-run station. However, SLDC may give backing-down instructions to wind generators on considerations **of grid security or safety of equipment or personnel**, and the Wind generator is bound to comply with the same.

150. Thus, the backing down instructions can only be given on the grounds of Grid security and safety of equipment or personnel.

151. We, therefore, examine the claim of the Appellant and the Respondent's comments only on these three grounds.

Whether the curtailment instructions (backing down) issued by SLDCs are as per prevailing Law and Regulations, if not, whether the compensation can be granted to the Appellant?

152. We find that the Commission shifted the onus of the proof on the Appellant, whereas the system operators, the Respondents against whom the complaint has been raised, were not asked to prove compliance with the provision of the Grid code, and relied only on "public interest" and section 38 of the Act on its power to issue instructions.

153. The approach of the Commission is indeed contrary to the law. Rather than rejecting the claims of the Appellant in one brush, the Commission ought to have examined the justification of each backing down instruction as per the prevailing Grid code and PPA and then give a reasoned speaking order devoid of any doubt about the legality and reasonableness of the backing down instruction.

154. The relevant clauses in the PPA dated 27.02.2015 executed between the Respondent herein and the Appellant are as follows:

(i) Clause 4.1(xv) states that SLDC may direct the Producer to temporarily curtail or stop its electricity generation without any liability on account of:

- a. *Inspection /repair/maintenance of RVPN and /or DISCOM Grid System and associated equipment or under forced outage conditions:*
- b. *Safety of equipment and personnel of the RVPM/Discoms*
- c. *Any other technical requirement to maintain grid discipline and security*

155. Therefore, the provision for issuing backing down instructions, as per the PPA, is identical to the State Grid Code, and thus, the backing down has to be examined in this aspect:

S.No.	Cause	Applicability in the present case
a.	Inspection /repair/maintenance of RVPN and /or DISCOM Grid System and associated equipment, or under forced outage conditions:	No
b.	Safety of equipment and personnel of the RVPM/Discoms	No
c.	Any other technical requirements to maintain grid discipline and security	Claimed by SLDC, so needs to be examined

From Commissioning to end –October 2017	Generation Loss (Mu Units)	Tariff Loss (Rs Cr)	GBI Loss (Rs Cr)	Total Revenue Loss (Tariff + GBI) (Rs Cr)
Back-downs/ curtailment by SLDC	31.77	18.11	1.59	19.70
Over-voltage on Ramgarh-Dechu line of RVPN, RVPNL	9.34	5.32	0.47	5.79
Break-downs on Ramgarh-Dechu line of RVPN, RVPNL	22.37	12.75	1.12	13.87
Total	63.47	36.18	3.17	39.35

156. The Appellant vehemently opposed item no. c. of the above table, for the reason claimed by the SLDC, inter alia, claimed that they have suffered huge financial loss on the following accounts:

157. From the records placed before us, inter alia, the Appellant's Load curtailment data analysis, the **Back-downs/ curtailment by SLDC**, unequivocally indicates that SLDC has been issuing backing down instructions to the Appellant regularly.

158. It's the function of SLDC to operate the grid in a secure manner, and events like the backing down of 'must run' plants happening on a regular basis due to an issue of grid security point towards the functioning and competence of SLDC,

indicating that it is not able to manage the grid in a secure manner.

159. The benchmark for deciding whether there was an issue of grid discipline and security, inter alia, requiring backing down of the wind generators, then the issue need to be examined whether such “grid discipline” violation is affected due to wind generators, i.e., whether they were generating beyond or under their schedule during the period of high frequency or Rajasthan was under drawing from ISTS due to its wrong schedule and wrong demand forecast.

160. It is important to note that, as per the CERC Grid code schedule revision, the grid-connected entities are allowed in six/four-time blocks, so the failure of SLDC to forecast demand and not revise the schedule should have been examined by the Commission.

161. On examining the Impugned Order passed by the Commission, it is seen that the State Commission, without any substantial evidence or prudent examination of the claim, has rejected the prayer of the Appellant.

162. It is, therefore, important to take note of the relevant paragraphs, i.e., para 41 and para 43, wherein the Commission has given its observation and which are not based on facts as not a single incident has been examined or tested in detail:

“41.Commission has looked into the assertion SLDC is instructing the RE stations to back down which enjoy Must-Run status but allowing conventional power stations to generate. From the material produced, it is observed that SLDC is also backing down conventional thermal power

stations **to the extent possible** as otherwise it will have general impact on power supply of the State.

...

43. Commission, after **looking the material** produced on behalf of Respondents, is of the view that SLDC **has not acted in the arbitrary manner** or directed back down for commercial reasons as SLDC has no commercial interest and is only a system operator. Even RVPN, under whom presently SLDC works, being only a Transmission company, has no interest leave alone commercial interest in issuing instructions to SLDC. Petitioners have also **not produced any material whatsoever against RVPN/SLDC**. The said decision by SLDC is therefore not contrary to law.”

163. The Commission failed to examine the phrase ‘**to the extent possible**’, whether such backing down complied with the legal principles. The Commission has not defined “to the extent possible” based on any technical parameters like the Minimum Technical Limit of the thermal generating station, nor has it given any opinion about selective data submitted by SLDC on the thermal generating station. It is not clear whether the thermal generators were brought to their technical minimum limits or partial backdown was done, and how much more margin was available for further backdown.

164. We find the role of the State Commission highly prejudiced, unjust, and arbitrary, without examining the submissions made by the Appellant. Even after taking a note of such submissions, it has decided and vetted the role of the SLDC, which certainly is contrary to the legal and operational provisions.

165. The Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 vide amendment dated 06.04.2016, define the Technical Minimum as under:

6.3B – Technical Minimum Schedule for operation of Central Generating Stations and Inter-State Generating Stations 1. The technical minimum for operation in respect of a unit or units of a Central Generating Station of inter-State Generating Station shall be 55% of MCR loading or installed capacity of the unit of at generating station.

166. Hence, for analyzing the margin available in a thermal power station, a benchmark was available to the State Commission to which, as per the Act, the State Grid Codes are to align the Central Grid Code, or at least use it for analysis of instances of curtailment.

167. The Commission failed to examine a single instance or instruction of back down in detail to conclude that SLDC had made all efforts to back down the conventional generator to its minimum technical limit and then took a decision based on the technical reasons that continued operation of the Renewable generator endangers the grid security. The Commission should have looked into the parameters, like tripping points or limits of voltage, frequency, or power flows are there where the grid enters into a danger zone and curtailment is required.

168. Also, the claim of the Commission that SLDCs and RRVPN are not commercial bodies; however, we are not inclined to accept such an unreasonable justification, as their action comes under this ambit. Further, they themselves in

their submission pointed towards public interest, and neither the Respondent nor the Commission clarified the terms and their scope. Also, for any curtailment decision, they have not explained what public interest they were serving.

169. The Commission, in its order, has failed to examine the claim of the Appellant regarding the unjustified instruction of curtailment. The Commission, in its generic order, only went by one side of the argument based on the response of Respondent No. 4 that it has taken action as per section 32. The Commission did not examine even a single instruction as a sample test to weigh the reasonableness of the claim of the Respondent.

170. The case dawdles on for more than one year, and a lot of evidence in the form of data has been submitted by the Appellant, and as per the order, it is evident that not a single instruction was tested on the cornerstone of “grid security”, the Commission made no efforts to define what actually means by grid security. Therefore, we have reached to the conclusion that the Commission had failed to undertake a fact-finding exercise and thereby abdicated its statutory responsibility under section 86(1)(f) of the 2003 Act. Hence, this is a clear miscarriage of justice and needs to be set aside.

171. Further, this Tribunal in the judgment dated 02.08.2021 in ***Appeal No. 197 of 2019 and IA NO. 1706 of 2019, National Solar Energy Federation of India vs. TNERC and Ors.*** has held as follows:

“Way forward for curtailment of RE power by State Load Dispatch

Centre

135. We have noticed that the analysis made by POSOCO is based on the grid parameters, margins available for backing down of conventional energy sources and the status of drawal by the State from the central grid. These parameters are apt for deciding whether the backing down is for the purpose of grid security or on commercial reasons. We also make it clear that the replacement of solar power by purchases of cheaper power from short term power markets shall also be treated as unauthorized activity. Accordingly, the following directions are issued to all the State Commissions, Discoms and SLDCs with regards to curtailment of power generated from Renewable Energy sources.

(i) For Future, any curtailment of Renewable Energy shall not be considered as meant for grid security if the backing down instruction were given under following conditions:

- a) System Frequency is in the band of 49.90Hz-50.05Hz
- b) Voltages level is between: 380kV to 420kV for 400kV systems & 198kV to 245kV for 220kV systems
- c) No network over loading issues or transmission constraints
- d) Margins are available for backing down from conventional energy sources
- e) State is overdrawing from the grid or State is drawing from grid on short-term basis from Power Exchange or other sources simultaneously backing down power from intrastate conventional or non-conventional sources.

(ii) As a deterrent, the curtailment of Renewable Energy for the reasons other than grid security shall be compensated at PPA tariff in future. The compensation shall be based on the methodology adopted in the POSOCO report. POSOCO is directed to keep the report on its website.

(iii) The State Load Dispatch Centre (SLDC) shall submit a monthly report to the State Commission with detailed reasons for any backing down instructions issued to solar power plants.

(iv) The above guiding factors stipulated by us would apply till such time the Forum of Regulators or the Central Government formulates guidelines in relation to curtailment of renewable energy.”

172. In view of the foregoing submissions, it is evident that the approach adopted by the State Commission in the Impugned Order suffers from a fundamental failure to conduct a granular and fact-based inquiry into each backing down instruction issued by the SLDC. The Commission’s uncritical acceptance of the SLDC’s claim of acting in “public interest” and reliance on Section 32 of the Electricity Act, without testing or validating each instance against the stringent parameters of grid security and operational norms, constitutes a manifest abdication of its statutory duty under Section 86(1)(f).

173. The absence of any technical scrutiny regarding whether thermal generators were first brought down to their technical minimums, or if curtailment of the

renewable energy was indeed the last resort “to the extent possible,” renders the findings of the Commission legally unsustainable.

174. Further, this Tribunal’s judgment dated 02.08.2021 in the National Solar Energy Federation of India case provides a clear, judicially endorsed framework for lawfully assessing curtailment of renewable energy. The principle that any backing down instruction given outside the stipulated grid security criteria, including frequency range, voltage levels, transmission constraints, and availability of margins from conventional energy sources, shall not be deemed justified and will obligate payment of compensation to renewable generators, supporting the Appellant’s claim in this Appeal before us. The SLDC’s failure to furnish cogent, transparent, and reasoned records to justify its curtailment actions violates these principles and the ‘must-run’ status accorded to renewable energy projects under the relevant Grid Code and PPA clauses.

175. On the question of compensation, the Appellant has demonstrated clear financial losses attributable to unlawful curtailment practices. The SLDC and the State Commission have overlooked their legal obligations to ensure fair treatment of renewable generators and safeguard their legitimate economic interests under contract and statute. Given the established principles of administrative accountability and the settled law on liability for misfeasance by public authorities, the Appellant is rightly entitled to compensation for revenue losses incurred due to arbitrary and unauthorized backing down instructions.

176. Accordingly, the present issue is squarely decided in favor of the Appellant. The State Commission’s Impugned Order is liable to be set aside to the extent it

rejects the Appellant's claims on the basis of generalized observations without substantive, technical, or factual examination. It is imperative that the SLDC be directed to adhere strictly to the Grid Code provisions, maintain detailed, transparent records for each instance of curtailment, and compensate the Appellant for losses suffered due to the unjustified backing down of its wind generation.

177. We are therefore satisfied that the claim for loss of deemed generation as made by the Appellant is reasonable and justified. Accordingly, the same shall be recovered in equal proportion from the Respondents namely SLDC, RRVNL, JVVNL in equal terms.

Whether the loss of generation suffered by Appellant due to curtailments owing to high voltage and non-availability of the transmission system has been dealt with by the Commission?

178. As already recorded in the foregoing paragraphs, as per the Grid code and PPA, each curtailment instruction is to be examined on the basis of “**Grid discipline and Grid security**” only. As the Respondent has not raised the issue of any grid discipline against Appellant, i.e., not giving a schedule or not adhering to the schedule by generating below or above the schedule, hence only issue that needs to be decided **is grid security**.

179. The basic contours of this case are **APPEAL NO. 197 of 2019 & IA NO. 1706 of 2019**, wherein Solar Power Developer in Tamil Nadu raised the issue of

arbitrary curtailment of Must Run solar generator by Tamil Nadu SLDC during 2015-16.

180. The issue of grid security has been decided by this Tribunal in its order dated 02.08.2021, passed in the above appeal, in dealing with the Solar curtailment in Tamil Nadu. After extensive consultation and examination of all curtailment decisions, the National Grid Operator, POSOCO, in its report submitted, states the following:

- a) Presently definition of 'Grid Security' is not specifically defined in the Grid Code.
- b) The same has been defined in the 'Report of the Expert Group: Review of Indian Electricity Grid Code' which was submitted to the CERC in January 2020 which has defined 'Grid Security' as "means the power system's capability to retain a normal state or to return to a normal state as soon as possible, and which is characterized by operational security limits;"
- c) Further, 'Normal State' is defined as "means the state in which the system is within the operational parameters as defined in this Grid Code."
- d) Further, in the context of system state classification, viz. Normal, Alert, Emergency, Extreme Emergency, and Restorative state, 'Normal State' is stated as "Power system is operating within the operational limits and equipment is within their loading limits. The system is secure and capable of maintaining stability under contingencies defined in the CEA Transmission Planning Criteria."
- e) Further Operational parameters defined in IEGC are summarized below:
 - a. Frequency band: 49.90Hz-50.05Hz

- b. Voltages: 380kV-420kV for 400kV systems, 198kV-245kV for 220kV systems
- c. Equipment within their loading limits.

181. After a detailed discussion, to define a situation of grid security, this Tribunal accepted the following parameters and concluded:

“135. We have noticed that the analysis made by POSOCO is based on the grid parameters, margins available for backing down of conventional energy sources, and the status of drawal by the State from the central grid.

These parameters are apt for deciding whether the backing down is for the purpose of grid security or on commercial reasons. We also make it clear that the replacement of solar power by purchases of cheaper power from short term power markets shall also be treated as unauthorized activity.

Accordingly, the following directions are issued to all the State Commissions, Discoms and SLDCs with regards to curtailment of power generated from Renewable Energy sources.

(i) For Future, any curtailment of Renewable Energy shall not be considered as meant for grid security if the backing down instruction were given under following conditions:

- a) System Frequency is in the band of 49.90Hz-50.05Hz*
- b) Voltages level is between: 380kV to 420kV for 400kV systems & 198kV to 245kV for 220kV systems*

- c) No network over loading issues or transmission constraints*
- d) Margins are available for backing down from conventional energy sources*
- e) State is overdrawing from the grid or State is drawing from grid on short-term basis from Power Exchange or other sources simultaneously backing down power from intrastate conventional or non-conventional sources.”*

182. Considering that the above decision was rendered by this Tribunal in an appeal for curtailment done during 2015-2016, and the instant appeal also belongs to the same period, and here too curtailment instructions were issued by SLDC on the basis of Grid security, the same criteria applied to this case, notwithstanding the word “in future” mentioned in this order. As a matter of judicial prudence, the interpretation of the word “grid security” cannot differ even if the matter is heard and disposed of at different times.

183. In fact, in the instance case, the only issue before us was whether there was any Grid Security issue, and if so, whether the System Operator, SLDC, had complied with the protocol of backing down of must-run power plants.

184. The principle of grid security and backing down of must-run power plants has already been settled by this Tribunal in the above-mentioned judgment.

185. Therefore, the points for consideration in deciding the issue of grid security are mainly frequency, voltage, and margin available in other generating stations,

which do not enjoy the status of must-run. Out of this, curtailment is due to overvoltage, as the Commission has not provided any findings on whether this overvoltage is caused by weakness or shortcoming in the transmission system, or due to operational issues.

186. Considering this, it is found that as Respondents did not submit other parameters, the only available matrix of decision remains to check the validity of any curtailment decision based on Grid security:

- (i) Whether the frequency was above 50.05 Hz
- (ii) Whether the margin was available in thermal or other generation for backing down.
- (iii) As the Respondents have not submitted complete data of margins available and only given a schedule of thermal generating station before and after removal of curtailment instructions, and selective submission of data of thermal generating station, exclusion of a few generating stations has been done, so only the decision parameter left is grid frequency at the time of curtailment instructions.

187. Therefore, it is concluded that in the first case of curtailment, where in generation loss of 31.77 MUs has been claimed, **for all the blocks where frequency was below 50.5 Hz, the curtailment on the pretext of grid security is not in accordance with the provision of the Grid code and hence illegal, and the Appellant is entitled to deemed generation /compensation.** Hence, Appellant's claim for such a block is accepted, and accordingly, curtailment during these blocks is declared unlawful.

188. There are two more claims of the Appellant on the generation loss of 9.34 MUs and 22.37 MUs on account of overvoltage and Transmission System Outage in Ramgarh-Dechu Line. It is evident from the impugned order that the Commission has not given any finding on Appellant's prayers regarding loss of generation due to frequent breakdown or security concerns of the transmission system of Respondent No. 3. Hence, not only is the order incomplete/ non-speaking, it is unjust as Appellant contended.

189. Its frequent representation to the Respondents for the proper maintenance and upgradation of the evacuation system and subsequent loss of generation and revenue due to this has not been examined by the Commission. Hence Commission has failed to fulfill its duty and given a generic order on a batch of petitions only on back-down or curtailment instructions issued by the SLDC.

190. As per section 39(2) of the Electricity Act, it is the function of the State Transmission Utility to plan, operate, and maintain the transmission system in coordination with generating companies and other licensees.

“(2) The functions of the State Transmission Utility shall be –

(a) to undertake transmission of electricity through intra-State transmission system;

*(b) to discharge all functions of **planning and co-ordination relating to** intra-State transmission system with -*

(i) Central Transmission Utility

(iv) Regional Power Committees;

v) Authority;

vi) licensees

(vii) any other person notified by the State Government in this behalf

(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

191. As per Section 40, it is the duty of the Transmission Licensee:

*“Section 40. (Duties of transmission licensees): It shall be the duty of a transmission licensee - (a) **to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;**”*

192. **As per clause 6.4.1 of Wind Policy 2012, RVPN and the State Discoms were also made responsible for augmentation of transmission/distribution systems within a mutually agreed time frame to ensure evacuation of power from wind Power Plants.**

193. It is, thus, the responsibility of STU that while granting connectivity to any generating company to its transmission to ensure security of the grid in accordance with the Grid code and connectivity regulations of the Central Electricity Authority. The frequent forced outages and incidents of high voltage at Ramgargh substation and consequent tripping of Ramgarh–Degchu line during the operation indicate that the planning, operation, and maintenance of the transmission system to which the Appellant’s generation station is connected is not satisfactory. The Commission needs to examine these incidents in detail and come to a conclusion on whether the transmission system was being operated in

accordance with the applicable standards and the Standard of Performance as mentioned in the RERC Regulations of Standard of Performance, 2006.

194. As both availability and voltage limits norms are mentioned in the Regulations, the Commission may examine the data of the relevant period and give its reasoned judgement on each incident, as the Appellant is claiming deemed generation.

195. The Commission also needs to examine the issue in view of standards, irrespective of the fact that, as per the PPA, for a forced outage deemed generation benefit is not allowed.

196. In case RRVPN is found lacking in fulfilling its statutory duty and contractual obligation to evacuate power from Appellant generating stations, it cannot hide behind the PPA clause, and suitable actions and compensation ought to be granted accordingly, as also mandated by section 57 of the Act.

“Section 57. (Consumer Protection: Standards of performance of licensee):

(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such

compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.”

197. From the standard of performance reports available at the RERC site, it is clear that RRVPN is not complying with the Standards during 2015-16 and 2016-17, as specified by the Commission way back in 2006. Hence, generating companies should not suffer from the poor performance of RRVPN.

198. The Appellant placed before us the long list of communications sent to RRVPN; the impugned order is totally silent on this aspect. For instance, where the curtailment instructions were issued by SLDC on account of overvoltage, the Commission ought to have examined whether prudent remedial action was taken on the Appellant's various communications to RRVPN in this regard.

199. Transmission planning is a coordinated planning process to be taken up by STU in coordination with all stakeholders, and generating stations are important stakeholders in the process because the transmission system planning needs to balance the interests of all stakeholders. After the delayed action taken by RRVPN, the performance of the transmission system improved, as informed by the Appellant. The commission may examine the issue of delay in action and come out with its clear findings.

200. Once the Commission gives its finding, the Appellant is given liberty either to approach the State Commission or this Tribunal for a claim of compensation for

overvoltage on the Ramgarh–Dechu line and its frequent breakdown.

Compensation for curtailed generation

201. The issue of compensation for curtailed generation has been dealt with in detail in Appeal No. 197 of 2019 and applied to this order as well. It is settled therein that even if the PPA did not mention a deemed generation benefit, a Renewable generator may be granted compensation for curtailed generation:

202. The aforementioned judgment referred to the Hon'ble Supreme Court judgment in **Case No.1999(6) SCC 667 in Common Cause, A Registered Society Vs. Union of India**, wherein the Hon'ble Supreme Court has noted that ***“the tort of ‘misfeasance in public office’ is concerned with a deliberate and dishonest wrongful abuse of the powers given to a public officer, and the purpose of the tort was to provide compensation to those who suffered loss as a result of improper abuse of power.”***

203. In the above judgement, it has further been held that ***“so far as the malice is concerned, while actual malice, if proved, would render Respondent’s action ultra vires and tortious and it would not be necessary to establish actual malice in every claim for misfeasance in public office.”***

204. Relying on various judgments, the Hon'ble Supreme Court has held as under:

“(6) Where a plaintiff establishes (i) that the defendant intended to injure the plaintiff or a person in a class of which the plaintiff is a

member (limb one) or that the defendant knew that he had no power to do what he did and that the plaintiff or a person in a class of which the plaintiff is a member would probably suffer loss or damage (limb two) and (ii) that the plaintiff has suffered loss as a result, the plaintiff has a sufficient right or interest to maintain an action for misfeasance in public office at common law. The plaintiff must of course, also show that the defendant was a public officer or entity and that his loss was caused by the wrongful act.”

205. Considering the above, this Tribunal granted the compensation to the Appellant in Appeal No. 197 of 2019. As in the present case, also the action of SLDC to issue curtailment instruction was not found legitimate as per the legal and regulatory principles including the Grid code and the stated reason for curtailment by SLDC “grid security” was not established as frequency was below 50.05 Hz, and ***misfeasance in public office*** by the government entity SLDC is established, hence, the Appellant is entitled for compensation against loss of revenue, in line with the decision rendered in Appeal 197 of 2019, the relevant extract is quoted as under:

*“133. The investments made in establishing solar projects, and the solar tariffs so determined, was premised on Must Run status as contemplated in the regulations framed under Act and the provisions in energy purchase agreement. **If must run status is not adhered to by the Respondent TANGEDCO and SLDC in violation of law, the members of the Appellant association would be deprived of recovery of legitimate tariff.** As solar power tariff is single part and*

*it is predominantly fixed cost in nature, unauthorised curtailment will ultimately result in solar generators failing to repay their loans. **If such actions are not penalised, the unauthorised curtailment will go unabated jeopardising the whole objective and intent of the Act. This conduct on the part of the State Load Despatch Centre which is public office cannot be said to be bona-fide and genuine. Therefore, we are of the view that since misfeasance has been established against TANGEDCO and TNSLDC, a statutory body under the Act, the Appellant is entitled to claim for compensation from TNSLDC and TANGEDCO. Both these entities shall jointly pay the compensation to the members of the Appellant Association.***

206. We are satisfied that the role of the Respondents in the present case is also in violation of the law, and the State Utilities SLDC and RRVPN deserve the imposition of penalties in order to restrict the unauthorised curtailment, jeopardising the whole objective and intent of the Act.

207. In view of the foregoing detailed analysis and the principles laid down by this Tribunal in Appeal No. 197 of 2019, it is manifest that the issue of generation loss on account of curtailments caused by overvoltage and the non-availability or poor maintenance of the transmission system has not been effectively addressed by the Commission in the Impugned Order. The Commission's failure to examine the multiple communications and representations made by the Appellant regarding inadequacies in the transmission infrastructure, system outages, and voltage issues renders the order incomplete and non-speaking on this critical aspect.

208. Further, the statutory and regulatory framework clearly places the responsibility for planning, operation, and maintenance of the transmission system on the State Transmission Utility, which includes ensuring smooth evacuation of power. Any shortcomings in this regard affecting the Appellant's generation capability call for a detailed factual inquiry by the Commission. Similarly, the standards of performance prescribed by the Commission and the duty to compensate consumers/ generators for failure to meet these standards under Section 57 of the Electricity Act also merit focused adjudication.

209. Accordingly, it is just and proper that this matter be remanded back to the Commission with a direction to scrutinize the issue of generation loss due to overvoltage and transmission system failures in an independent, transparent, and reasoned manner. The Commission shall consider all relevant material, including the Appellant's correspondence, technical data, transmission system performance reports, and applicable statutory and regulatory provisions, and pass a reasoned order on the claims for compensation or other reliefs as sought for.

210. We direct that the Appellant is entitled to claim compensation from Rajasthan SLDC and RRVN. Both these entities shall jointly pay the compensation to the members of the Appellant.

211. The issue is decided in favour of the Appellant.

Whether the impugned order issued by the Commission is a speaking and complete order and/ or deciding the issue just

based on “no malafide”, the Commission made an error?

212. As described above, the impugned order of the commission is not reflective of judicial prudence, and without a proper enquiry and examination of the facts, a generic order is given for a batch of petitions. The specific issues raised by the Appellant are dealt with improper way, and out of the three issues, on two issues no finding has been given. Hence, this order is not a speaking order and is liable to be rejected.

213. We agree with the Appellant that the Appellant in its Petition before the RERC has demonstrated three aspects, i.e., firstly, its plant enjoys must run status and that it is being backed down, secondly; the backing down is rampant and frequent and thirdly, at the time when the Appellant’s renewable generation is being backed down, the overall PLF of the conventional plants is higher than the technical minimum. The test is not to be done on an arbitrary approach, but on the facts as placed on record, and whether curtailment was really required based on system security.

214. Hence, the State Commission was obligated to test the conduct of the Respondents: SLDC on the aforesaid three issues. It had to seek data and explanation from SLDC on the specific instances of backing down. The Act and the provisions of the grid code do not encompass such an additional requirement. Rather, the Act and the Grid Code obligate the SLDC to follow the ‘must run’ status in the letter of the law. However, ignoring the same by the State Commission, in fact, negates the entire object of granting **'Must Run'** status to the Appellant.

215. It is an admitted position of law that if the Statute/ Act mandates the Statutory Authority to act in a particular manner, then the said Authority does not have any option but to act in that manner.

216. On the contrary, we found that all the Statutory and Government authorities have acted in violation of the same. In this regard, the Judgment of the Hon'ble Supreme Court in the case of ***Bhavnagar University vs. Palitana Sugar Mills (P) Ltd. (2003) 2 SCC***, held that: -

"40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities, while acting under the said Act are only creature of statute. They must act within the four corners thereof."

217. The Appellant had also placed on record the SLDC letter dated 07.02.2017, wherein admittedly the SLDC states that it is issuing backing down instructions to avoid deviation charges; therefore, admittedly, the backing down issued to the Appellant was for reasons other than what is provided under the Grid Code or the PPA.

218. Therefore, once it was established that the Appellant's generating station is 'Must Run' and has been subjected to 'Backing Down' owing to reasons other than those stipulated in the Grid Code, it was the duty of the State Commission to allow the Petition and grant consequential reliefs to

the Appellant.

219. The State Commission fell into serious error by '**advertent intent upon the action**' of the Respondent SLDC, which travels beyond the scope of Section 33 of the Act read with Regulation 7.8.1 of the Grid Code. Hence, the State Commission, by reading 'patent arbitrariness' into the requirement of the Grid Code or the Act, has read down the mandate of the Act itself, which is expressed through Section 86 (1)(e), and the Impugned Order is liable to be set aside for this reason, in addition to the above.

220. Basing the judgement on the proposition that Respondents are not commercial organisation, Commission exonerate their action without a judicial probity and tried to pre judge the whole issue with the lense of intent, without going into the merit of the claim of the Appellant, has made this judgement erroneous to the core and Commission is instructed to pass consequential order on item No 1 alongwith interest and re -hear the Appellant on item no 2 & 3 of the claim made by the Appellant.

221. In view of the foregoing submissions, it is evident that the impugned order suffers from fundamental infirmities on both facts and law. The absence of a detailed and reasoned analysis by the Commission on the specific factual matrix presented by the Appellant renders the order non-speaking and legally unsustainable. The Commission's reliance on the absence of malafide intent by the Respondents SLDC and RRVPN, without undertaking a meticulous examination of the data and explanations regarding backing down, falls short of the judicial prudence expected of a regulatory adjudicator. Such superficial

adjudication negates the core purpose of the 'Must-Run' status accorded to renewable energy generators under the statutory and regulatory framework.

222. Given that the Appellant has clearly demonstrated that its wind power plant, possessing must-run status, has been subjected to frequent and unwarranted backing down even when the overall Plant Load Factor of conventional plants remained above their technical minimum, the Commission was duty-bound to critically evaluate and scrutinize these operations from the perspective of system security and grid management. The failure to do so effectively amounts to abdication of the Commission's regulatory and adjudicatory responsibilities under Sections 33 and 86 of the Electricity Act, 2003, and contravenes the principles embodied in the Rajasthan Electricity Grid Code and the relevant PPAs.

223. As already directed and observed that the matter deserves to be remanded back to the Commission with directions to conduct a thorough inquiry into the circumstances leading to backing down instructions issued to the Appellant.

224. The Commission should seek complete data, furnish a detailed reasoned order addressing all material submissions by the Appellant, and ensure that decisions on backing down are strictly in accordance with statutory provisions, Grid Code mandates, and the 'must-run' status of the Project.

225. The Commission is also directed to consider and decide upon the Appellant's claims for consequential relief, including compensation for losses incurred due to unlawful backing down, and to pass appropriate orders thereon with reasons recorded within 3 months from the passing of this judgment.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the Appeal No. 108 of 2018 has merit and is allowed.

The Order passed by the Rajasthan Electricity Regulatory Commission in Petition No. 847 of 2016 shall stand set aside to the extent as observed herein above.

The Rajasthan Electricity Regulatory Commission is hereby directed to pass consequential order strictly in compliance to the observation and conclusion made hereinabove. The loss of generation on account of backing down of the Appellant's power project shall be compensated as observed in paragraph no. 175.

The other compensation claims shall be examined by the RERC and pass consequential relief to the Appellant.

The whole exercise shall be completed within 3 months from the date of this judgment.

PRONOUNCED IN THE OPEN COURT ON THIS 9th DAY OF SEPTEMBER, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj/kks