



W.P.No.22406 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.12.2021

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The Honourable **Mr.Justice Krishnan Ramasamy**

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and
W.M.P.No.22503 of 2017

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

...Petitioner

Vs.

1. Tamil Nadu Generation and Distribution,
Corporation Ltd., (TANGEDCO)
rep. by its Chairman and Managing Director,
10th Floor, 144, Anna Salai,
Chennai -600 002.
2. Tamil Nadu Electricity Regulatory Commission,
rep. by its Secretary,
19-A, Rukumini Lakshmipathy Salai,
Egmore, Chennai – 600 008.

...Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the first respondent to release the interest on delayed payments, in terms of the order of the Hon'ble Supreme Court, dated 08.07.2016, in I.A.No.4 of 2016, in Civil Appel No.2937 of 2014 and Honourable Appellate Tribunal for Electricity in a time bound manner.

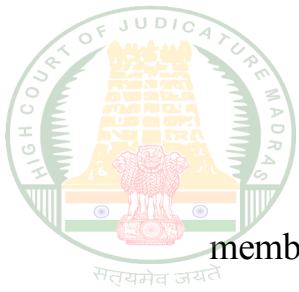
For Petitioner : Mr.Rahul Balaji

For Respondent-1 : Mr.L.Jai Venkatesh
Standing Counsel

ORDER

This Writ Petition is filed, seeking for a mandamus directing the first respondent to release the payment pertaining to the interest on delayed payments, in terms of the order of the Hon'ble Supreme Court, dated 08.07.2016, in I.A.No.4 of 2016, in Civil Appel No.2937 of 2014 and Honourable Appellate Tribunal for Electricity in a time bound manner

2. The petitioner herein is an Association represented by its Secretary General. The petitioner-Association is a registered association, consisting of members, who have invested in the putting up of Windmills in India. The



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members of the petitioner-Association have established Wind Power Generation Projects for the purpose of sale of power generated and has entered into power purchase agreements with the first respondent-TANGEDCO. The power generated by these units is being sold to TANGEDCO under respective agreements. The grievance of the petitioner is that, the members of the petitioner-Association has been raising invoices from time to time in accordance with the contracts and Tarriff Orders. However, the payments that have been received from respondent-TANGEDCO are being consistently delayed, that too, without any interest for such belated payment. Such non payment of interest is a denial of a valuable right conferred by specific Tariff orders and the judgments of the Honourable Supreme Court and APTEL. Hence, the present Writ Petition is filed seeking for the aforesaid relief.

3. The learned counsel appearing for the petitioner submits that, in the light of the order passed by the Appellate Tribunal for Electricity in Appeal No.11 of 2012, dated 17.04.2021, which was also confirmed by the Honourable Supreme Court, in I.A.No.4 of 2016 in Civil Appeal (No) S.2937

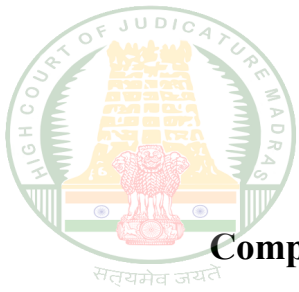


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of 2014, dated 08.07.2016, the petitioner is entitled for the interest at the rate of 10%p.a. towards the payments made belatedly. Despite the said order, the respondent-TANGEDCO has not paid the interest for the belated payments made by them.

4. Mr.L.Jai Venkatesh, learned Standing Counsel for the respondent-TANGEDCO fairly admitted that in the light of the orders relied upon by the learned counsel for the petitioner, the petitioner is entitled to the interest at the rate of 10% on such belated payments made by the respondent-TANGEDCO and the same will be paid, if a direction is issued by this Court.

5. During the course of arguments, the learned counsel for the petitioner expressed his anguish that despite Section 86 of the Electricity Act, 2003, which clearly enumerates as to what are the functions of the State Commission to be performed and despite the Hon'ble Supreme Courts expressing its peevishness over the conduct of the State Commission in not functioning, with what purpose, it is purported to act upon, viz, in the decision rendered in the case of **Maharashtra State Electricity Distribution**



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reported in 2021 SCC Online APTEL 65, the learned counsel states that the State Commission carried pittance over the same. **Hence, the learned counsel seeks for specific direction of this Court, directing the Tamil Nadu Electricity Regulatory Commission to monitor entire activities of the TANGEDCO, including payment of interest by the first respondent to the members of the petitioner-Association in terms of the order passed by the Honourable Supreme Court, in Appeal No.386 of 2019, referred to above, and in terms of Section 86 of the Electricity Act, 2003.**

6. **This Court finds sum and substance in the point urged before this Court by the learned counsel for the petitioner.** Obviously, Section 86 contemplates on what are the functions of the State Commission to be performed for promotion of investment in electricity industry; for promotion of competition, efficiency and economy in activities of the electricity industry; and so on, and in this connection, it would be useful to refer to the said Section, which is extracted herein below:-

Section 86. (Functions of State Commission): -



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(1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from The Electricity Act, 2003 other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(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;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for



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arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

(k) discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-

- . (i) promotion of competition, efficiency and economy in activities of the electricity industry;
- (ii) promotion of investment in electricity industry;
- (iii) reorganization and restructuring of electricity industry in the State; The Electricity Act, 2003
- (iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy,



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National Electricity Plan and tariff policy published
under section 3".

6.1 A perusal of the above Section would show that, it is the duty of the TNERC to adjudicate upon the dispute arising between the licensees and Generating Companies, and in fit case, to refer the dispute for arbitration proceedings. In the present case, the respondent-TANGEDCO has been making delayed payment to the members of the petitioner-Association. In case of delay, the members of the petitioner-Association are entitled for interest and the said interest would be on commercial rate. In fact, the Hon'ble Supreme Court also upheld the payment of interest by the Electricity Generating Companies to the licensees in the case of belated payment, in I.A.No.4 of 2016, in Civil Appeal No.2937 of 2014, dated 08.07.2016 and in Appeal No.386 of 2019.

6.2 Therefore, this Court is of the view that the present transaction between the petitioner-Association and the respondent-TANGEDCO, which is with regard to supply of energy is no doubt a commercial transaction.



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Therefore, the members of the petitioner-Association are entitled to the interest for such belated payment at commercial rate. However, the Hon'ble Supreme Court rationalized the said commercial interest at 10%, which would be just and reasonable.

6.3 Hence, this Court directs the respondent-TANGEDCO to pay interest, wherever, there is delay in settling the dues to the members of the petitioner-Association more than 60 days. From 61st day and till the date of clearing the entire dues to the members of the petitioner-Association, interest shall be paid at the rate of 10% by the respondent-TANGEDCO. It is made clear that, this Court is passing this order due to the fact that the second respondent-TNERC has not taken any steps to decide the present dispute, which, it ought to have done, as per the provisions contemplated under Section 86 of the Electricity Act, 2003. It is further made clear that, in case, the members of the petitioner-Association made any claim seeking interest more than 10%, the second respondent-TNERC is always at liberty to consider and decide the same in accordance with law.

7. With the above observations and directions, the Writ Petition



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stands disposed of. No costs. Consequently, connected Miscellaneous

Petition is closed.

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Index : yes/no

Speaking Order/Non speaking order

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Krishnan Ramasamy,J.,

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