

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Special Original Jurisdiction )

Wednesday, the Eighth day of July Two Thousand Fifteen

PRESENT

THE HON'BLE MR JUSTICE M. SATHYANARAYANAN

MP No.1 of 2015

IN WP.20336/2015

TAMILNADU SPINNING MILLS ASSOCIATION, [ PETITIONER ]  
NO.2, KARUR ROAD, NEAR BESCHI COLLEGE,  
MODERN NAGAR, DINDIGUL-624 001, REP.  
BY ITS CHIEF ADVISOR DR.K.VENKATACHALAM.

vs

1 TAMIL NADU GENERATION AND [ RESPONDENTS ]  
DISTRIBUTION CORPORATION LTD (TANGEDCO), 144,  
ANNA SALAI, CHENNAI-2, REP. BY ITS CHAIRMAN.

2 TAMILNADU TRANSACTION  
CORPORATION LTD (TANTRANSCO), 144, ANNA  
SALAI, CHENNAI-2, REP. BY ITS CHAIRMAN.

3 STATE LOAD DESPATCH CENTER  
(SLDC), 144, ANNA SALAI, CHENNAI-2, REP. BY  
ITS DIRECTOR-OPERATIONS.

4 TAMILNADU ELECTRICITY  
REGULATORY COMMISSION, 19-A, RUKMINI  
LAKSHMIPATHY SALAI, EGMORE, CHENNAI-8.

Petition praying that in the circumstances stated therein  
and in the affidavit filed therewith the High Court will be pleased  
to grant Interim Injunction restraining the 1st Respondent  
TANGEDCO, 2nd Respondent TANTRANSCO and the 3rd Respondent SLDC  
from enforcing any more back out the windmills of the Members of  
the Petitioner in the guise of grid stability till the Writ  
Petition is disposal of Writ Petition (in MP.1/2015 in  
WP.20336/2015)

Order : This petition coming on for orders upon  
perusing the petition and the affidavit filed in support thereof  
and upon hearing the arguments of M/S.R.S.PANDIYARAJ, Advocate for  
the petitioner, M/s. P.GUNARAJ, Advocate for R1 to R3 and MR.ABDUL  
SALEEM, Advocate for R4, the court made the following order:-

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Learned counsel for the petitioner has drawn the attention of this Court to the order, dated 30.06.2014, of the Appellate Tribunal for Electricity (APTEL) in Appeal No.327 of 2013, filed by Indian Wind Energy Association, represented by its Secretary General, Anna Salai, Chennai-600 002, against respondents 1 and 4 herein, and would submit that the Appellate Tribunal made observations as to the state of power shortage and that wind energy is a seasonal energy and it is not available round the clock around the year and, therefore, it is necessary for the distribution licensee to maintain balance of the various sources of energy both conventional and renewable in its portfolio. It is also observed in the said order that it is not correct for the wind energy generators to stall the process of procurement of firm power from conventional sources of energy which is also essentially required to be tied up in view of huge power shortage prevailing in the State and future growth of power demand and to meet the demand on round the clock basis. It was further held therein that the State Commission is the appropriate authority to approve procurement of power from various sources and to ensure that the balance is maintained between the various conventional and non-conventional sources of energy with a view to meet the power demand of the consumers on 24x7 basis.

2. Learned counsel for the petitioner also heavily relied upon the following paragraphs of the above said order of APTEL :

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

10. In our opinion, the wind energy should be utilized fully by optimum scheduling at conventional power plants subject to maintenance of grid security. Hence, we direct the State Commission to ensure, while approving the PPAs for procurement of long term power under Section 63 of the Electricity Act, 2003, that there is no take or pay or 'must run' provision so that the power plants can be asked to back down generation up to the minimum threshold limit during the high wind season to accommodate generation from wind energy generators.

11. It has been submitted by the State Commission that the issue of "Must Run Status" for the wind energy generators is pending before

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the State Commission for adjudication consequent to the transfer of Writ Petitions by the High Court of Madras and those Petitions are listed for hearing shortly. Thus, the appellant has liberty to participate in these proceedings to raise the issues relating to full utilization of the wind energy capacity.

12. In view of the above, we do not find any merit in the Appeal relating to intervention of the Appellant in the proceedings for long term procurement of power in the present case. However, we have given some directions to the State Commission keeping in view the interest of wind energy generators."

3. Learned counsel for the petitioner would contend that W.P.No.22419 of 2013 was filed by the petitioner, relating to illegal enforcement of continued back outs and also for directing the respondents to adequately compensate for back out periods, wherein the orders were reserved by this Court, and, in the interregnum, the Tamil Nadu Electricity Regulatory Commission started functioning on filling up of new members and hence a petition was filed to transfer the said writ petition for final disposal by TNERC and accordingly this Court directed TNERC to dispose of the matter within a period of four weeks from the date of receipt of a copy of the order. Thereafter, TNERC approached this Court for modification of the order passed by this Court on 27.01.2014 and, this Court, on 24.02.2014, extended the time limit by one month from the date of payment of Rs.1,00,000/- each from the writ petitioners, including the petitioners in W.P.Nos.22420 and 22421 of 2013 also. On modification of the order, the petitioner also paid the required fee before the first respondent under the bona fide expectation that TNERC would dispose of the matter within the stipulated time and Appeal No.21 of 2014 was argued elaborately and orders were reserved on 17.04.2014, with a direction to both the parties to submit their written submissions within three weeks, pursuant to which, the petitioner also filed written submissions on 20.05.2014. However, no orders came to be passed in the said appeal for quite a long time. At last, the said appeal, namely, Appeal No.21 of 2014 came to be disposed of on 01.07.2015, wherein, the Senior Member, namely, Mr.Nagalsamy has given his finding, which, according to the learned counsel for the petitioner, is in favour of the petitioner, and the Junior Member, namely, Mr.G.Rajagopal has given a dissenting verdict.

4. The relevant findings of the Senior Member, namely, Mr.S.Nagalsamy, are as under:

"11. Taking into account the issues discussed and decision arrived at supra, Commission summarizes the order on the prayer of the petitioners as below :-

(i) The "MUST RUN" status provided to the

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WEGs by the IEGC, TNEGC and the Commission's Tariff Orders issued from time to time is the plain and unequivocal language of the laws and it shall be followed in letter and spirit by all entities including the SLDC. However, on consideration of grid security or safety to men/machine, the SLDC may issue appropriate directions to the entities concerned. Before issuing any backing down instructions to the WEGs by the SLDC, the SLDC shall ensure the compliance of directions issued in this order. In case of any dispute over such backing down instructions, the SLDC has to prove their appropriate action with relevant data /information as specified in this order.

(ii) The SLDC is handling one of the highest penetrations of infirm wind power in the country. The backing down details submitted by the petitioner in MP 14 of 2012 show that many of the backing downs were done by the respondents when the frequency was above 50 Hz. Hon'ble APTEL has issued certain instructions to safeguard the interest of the WEGs in its order dated 30.6.2014. The Commission has issued certain specific/additional directions in this order. New generators with capacities of 600 MW have been recently connected to the Tamil Nadu Grid. Southern Grid has been connected to the rest of the grid of the country and the capacity of inter regional power transfer is likely to be increased. These developments may enhance the capability of accommodating the infirm wind power in Tamil Nadu Grid and give better leverage to SLDC to handle the frequency within the prescribed limit. In light of the above, Commission feels that it is prudent not to provide deemed generation facility to the petitioners. This order will apply only prospectively. Since the order will take prospective effect, the question of declaring the backing down orders as invalid does not arise.

(iii) The SLDC has been directed in this order to comply with certain procedures before backing down of WEGs in line with the order issued by the APTEL. Any backing down done beyond the scope of such directions is not legally valid. The entities responsible for such backing down are liable for appropriate action under the Act and Regulations/Orders made thereon.

(iv) Commission has declared in clear terms in this order that the actions of the licensees

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concerned to provide 'Temporary Connectivity' after getting an undertaking to the effect that the feeders / Power Transformers will be switched off whenever it gets overloaded is not legally valid. Taking such undertaking by the licensee to circumvent the existing law is illegal. It is the responsibility of the licensee to implement the regulation / orders of the appropriate authority. An undertaking obtained without the legal standings cannot be enforced under the law. Once the connectivity is given to an entity, the licensee shall honour their commitments as per law. The Commission reserves the right to take appropriate action under Section 142 of the Act on such violations.

(v) The State Transmission Utility (STU) and the Distribution Licensee shall ensure development of an efficient, coordinated and economical system of intra-state transmission and distribution lines as the case may be, for smooth flow of electricity from a generating station to the load centers as mandated in Sections 39 and 42 respectively. Tariff regulation specifies that the normative availability of transmission system shall be 98%. It also specifies that full annual transmission charges shall be recoverable at the target availability of 98% and the payment of transmission charges below the target availability shall be on pro-rata basis. The availability shall be considered subject to other related provisions of the Act, Regulations and Orders. The licensees are liable for action under Section 57 of the Act in addition to other provisions. Commission's Standard of Performance shall apply to the failures of the network maintained by the Distribution Licensee in addition to the other relevant provisions of the Act and Regulations. The affected party can claim action/compensation to case basis.

(vi) SLDC shall equip themselves to obtain real time data of its generation and demand and shall do real time control of the grid. In case of any backing down dispute in future, the SLDC shall prove that there is a security / safety danger to the grid with the details of frequency linked 15 minutes data of all generation / purchase, quantum of backing down, over drawal / under drawal, SRLDC direction, if any. etc.

(vii) SLDC shall send a Quarterly Report on MOD and backing down details to the Commission.

(viii) To avoid giving room for any biased

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functioning of SLDC, the Secretary of the Commission is instructed to send an advice note to the State Government under Section 86 of the Act to segregate and notify the SLDC as a Government Company, etc., as required by Section 31 (2) of the Act."

5. The dissenting verdict of the Junior Member, namely, Mr.G.Rajagopal, is to the following effect :

"While we agree in principle that the "Must Run Status for the wind is the ultimate objective, we also would like to make it clear that the same should always be subjected to the security of the Grid and effort is required on the part of both the WEGs and the SLDC to achieve the said objective. We would like to ensure that there is a win-win situation for both sides in the interest of the State by implementing the "Must Run Status" to the extent possible subject to security of the Grid and till such time the statutory support is forthcoming in the Electricity Act, 2003, the said approach may suit the interests of both sides."

After making the abovesaid observations, he passed the following order :

"In view of the above findings, we hold that the impugned order passed by the respondents issuing back down instructions to the wind generators is in consonance with the Electricity Act, 2003, and the regulations made thereunder. Inasmuch as the instructions have the sanctity of law, we are unable to grant any relief to the petitioners in the form of compensation for loss of energy. However, the interests of the wind generators cannot be overlooked and hence, the Commission, keeping in view of the directions of Hon'ble APTEL in Appeal No.327 of 2013, issue the following directions to the licensee as well as wind energy generators :-

1. The distribution licensee shall ensure scheduling and planned maintenance of conventional generating units during high wind season and procure short term power after considering the likely availability from wind energy.

2....

3. The distribution licensee shall make every endeavour to see that the wind energy is utilized fully by optimum scheduling at conventional power plants subject to maintenance of grid security.

4....

5. The Wind Energy Generators shall strive to schedule their energy in advance, as far as possible, in order to ensure that the functions of

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the SLDC are carried on smoothly with better visibility without any threat to the Grid security.

6...."

6. It is the submission of the learned counsel for the petitioner that the Junior Member, who has dissented from the Senior Member, also agreed with the Senior Member that the "Must Run Status" for the wind is the ultimate objective and that the interests of the wind generators cannot be overlooked. It is also pointed out by the learned Junior Member that keeping in view the directions of the Hon'ble APTEL in Appeal No.327 of 2013, the directions, referred to above, have been issued. According to the learned counsel for the petitioner, respondents 1 to 3 herein, contrary to the orders of APTEL and TNERC, are not implementing the "Must Run Status" to the wind mills, but, instead, are backing out the wind mills, and, accordingly, he prays for appropriate interim orders.

7. Conversely, Mr.P.Gunaraj, learned Standing Counsel, who accepts notice on behalf of respondents 1 to 3, would submit that taking into consideration the safety of the Grid only, respondents are taking steps for backing down of the Grid and he seeks time to file counter.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. It is to be pointed out that the order of APTEL passed in Appeal No.327 of 2013, dated 30.06.2014, has become final and there is no dissenting verdict given by the Members of the fourth respondent Commission thereto. According to the learned counsel for the petitioner, the verdict of the Senior Member of the Commission is in favour of the petitioner and the observations made by the Junior Member, which are dissentious, would also prima facie disclose the interests of the parties and that he has also agreed in principle that the "Must Run Status" is the ultimate objective of the wind mill, and it is also made clear that the same is always subject to the scrutiny of the Grid and that effort is required on the part of both the WEGs and the SLDC to achieve the said objective. At the same time, the Senior Member, in his findings at point (v), also held that SLDC has failed to supply data on the backing down of WEGs in spite of directions from the Commission to verify whether it has backed down only on consideration of grid security / safety of equipment or personnel or otherwise. The Commission in its Tariff Order T.P.No.1 of 2013 issued on 20.06.2013, had declared that the energy available from "MUST RUN" power plants will be dispatched first as specified in the State Grid Code. This includes generation from WEGs. The relevant provision of the order is reproduced below.

"4.213. For the purpose of determination of power purchase cost, the Commission has followed the methodology given below :-

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**Energy available from MUST RUN power plants  
will be despatched first."**

10. Similar provision has been specified in Para 4.131 of the *suo-motu* Tariff Order No.9 of 20143 issued by the Commission on 11-12-2014. From the said provisions of the Act and Policies/Regulations/Orders made thereon, it is clear that wind power, being a renewable source of energy, has to be promoted and it has the top most priority in merit order dispatch along with "run of river" based Hydro Stations and Nuclear Stations.

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

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

13. Notice.

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

-sd/-  
08/07/2015

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14/7/15

Sub Assistant Registrar ( Statistics / C.S. )  
High Court, Madras - 600 104.

TO

1 THE CHAIRMAN,  
TAMIL NADU GENERATION AND DISTRIBUTION  
CORPORATION LTD., (TANGEDCO),  
144, ANNA SALAI, CHENNAI-2.

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2 THE CHAIRMAN,  
TAMILNADU TRANSMISSION CORPORATION LTD  
(TANTRANSO), 144, ANNA SALAI, CHENNAI-2.

3 THE DIRECTOR-OPERATIONS,  
STATE LOAD DESPATCH CENTER (SLDC),  
144, ANNA SALAI, CHENNAI-2.

4 TAMILNADU ELECTRICITY  
REGULATORY COMMISSION, 19-A, RUKMINI  
LAKSHMIPATHY SALAI, EGMORE, CHENNAI-8.

C.C. to M/S.R.S.PANDIYARAJ Advocate SR.No. 9468.

C.C. to M/S.P.GUNARAJ Advocate SR.No. 9511.

C.C. to M/S. ABDUL SALEEM Advocate on payment of necessary  
charges

Order in  
MP.1/2015 in  
WP.20336/2015

Date :08/07/2015

From 26.2.2001 the Registry is issuing certified  
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