

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

**IA No.105 of 2012 in Appeal No.51 of 2012,
IA No.119 of 2012 in Appeal No.56 of 2012**

Dated: 3rd May, 2012

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

**IA No.105 of 2012 in
Appeal No.51 of 2012,**

In the matter of:

**M/s. Indian Wind Power Association
Rep. by its Secretary General
Door No. E, 6th Floor
Tower I, Shakthi Towers
No.766, Anna Salai
Chennai – 600 002**

.... Appellant(s)

Versus

**1. The Hon'ble Tamil Nadu Electricity Regulatory
Commission
No.19 A, Rukmani Lakshmipathy Salai
Chennai 600 008**

.... Respondent(s)

**2. Tamil Nadu Electricity Board
Rep by its Chairman
800, Anna Salai
Chennai – 600 002**

**3. The Chief Financial Controller/Rev
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002**

**Counsel for the Appellant (s) : Mr. Rahul Balaji
Mr. T. Srinivasa Murthy**

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

**IA No.119 of 2012 in
Appeal No.56 of 2012**

In the matter of:

**The Southern India Mills' Association
Represented by its Secretary General
No.41, Race Course Road
Coimbatore – 641 018** **Appellant(s)**

Versus

**1. Tamil Nadu Electricity Board
represented by its Chairman,
No.144, Anna Salai
Chennai – 600 002** **Respondent(s)**

**2. Tamil Nadu Electricity Regulatory
Commission
TIDCO Office Building
No.19 A, Rukmani Lakshmi pathy Salai
Marshalls Road, Egmore
Chennai 600 008** **Respondent(s)**

**Counsel for the Appellant (s) : Mr. N.L. Rajah
Mr. S.S. Swaminadhan
Mr. Saurabh Gupta
Mr. Arun Anbumani**

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

ORDER

PER HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

The IA nos.105 of 2012 and 119 of 2012 have been filed by M/s Indian Wind Power Association and Southern India Mills Association respectively for interim orders for stay of the impugned order dated 28.12.2011 passed by the Tamil Nadu Electricity Regulatory Commission validating levy of excess demand and energy charges in terms of the clarification given in the letter dated 25.6.2010 of Tamil Nadu Electricity Board ("Electricity Board").

2. The brief facts of the case are as under:-

2.1 The Appellants are the Associations consisting of members who have invested in putting up wind energy generators.

2.2 Tamil Nadu Electricity Regulatory Commission passed an order dated 28.11.2008 regarding imposition of restrictions and control of power supply due to power shortage in the state and levy of excess demand charges and energy charges on consumption by HT consumers for exceeding their energy

and demand quota. Before this on 17.11.2008, the Electricity Board issued a memo for computation of the energy and demand quota of the HT consumer. According to the memo dated 17.11.2008 for fixing energy and demand quota, the actual energy supplied (monthly average) for three months average by the captive power plant was to be considered. The State Commission by order dated 28.11.2008 also directed that the method for determination of demand and energy quota for the wind energy captive users would be same as that of other captive users. The State Commission also permitted utilization of the banked wind energy between 1.12.2008 to 30.4.2009 in five equal monthly instalments, wherever necessary by enhancing the demand and energy quota subject to evening peak hour restrictions.

2.3 Subsequently, the State Commission in a suo moto proceeding No.1 of 2009 passed an order on 28.10.2009 giving detailed directions for computing base energy consumption and base demand for the captive users including the wind energy captive users for the period from 1.11.2008 to 31.10.2009 and also for future i.e. with effect

from 1.11.2009. The following directions were given in the State Commission's order dated 28.10.2009 for future:-

- i) From 1.11.2009, the base demand and base energy may continue to be fixed with reference to the formula laid down by the Electricity Board in their memo dated 1.11.2008.
- ii) Unutilized banked energy as on 1.11.2009 may be utilized by the captive users from 1.11.2009 up to 31.3.2010 in five equal instalments. In addition the current generation would also be eligible for additional energy and additional demand quota, both current generation as well as the energy drawn from the bank would count for computation of equivalent demand.
- iii) From 1.11.2009, the captive users shall declare on the first of every month, the energy proposed for captive use for the following month, which shall be considered for the purpose of energy quota and demand quota respectively in terms of the memo of the Electricity

Board dated 17.11.2008. The energy so declared shall roughly be the monthly average generation.

- iv) Peak hour current generation as well as peak hour banked energy shall be eligible for peak hours utilization every month subject to limit of one twelfth of annual peak hour generation. .
 - v) Energy which remains unutilized as on 31.3.2010 shall be eligible for encashment at the rate of prescribed by the State Commission.
- 2.4 The Chief Financial Controller of the Electricity Board by letter dated 25.6.2010 issued a clarification to all the Superintending Engineers of the distribution circles of the Board that the actual energy supplied by the captive power plant as indicated in the memo dated 17.11.2008 was meant only the actual energy adjusted.
- 2.5 Subsequent to the above clarification the Electricity Board which was so far computing the quota based on the energy

generation of the captive wind energy generator started using the revised method of computing quota based on actual energy adjusted from the wind energy generator.

2.6 Aggrieved by the clarification dated 25.06.2010 issued by the Electricity Board, the Appellants filed a petition before the State Commission requesting for directions to the Electricity Board to strictly follow its memo dated 17.11.2008 and order dated 28.10.2009 passed by the State Commission and to calculate the quota on the basis of units injected into Grid by the wind energy generators and not on the basis of units consumed by the consumer industries and also to punish the Electricity Board under Section 142 and 146 of the Act, 2003.

2.7 The State Commission in the impugned order dated 28.12.2011 after detailed analysis of its orders dated 28.10.2009 and 20.03.2009 and the Electricity Board's orders dated 17.11.2008 and 25.6.2010 held that the clarification dated 25.6.2010 issued by the Board was in order but to be fair the same clarification should have effect from 25.06.2010. However, the State Commission noted that the Electricity

- Board had usurped the authority of the State Commission in clarifying a matter arising from previous orders of the Commission and decided to issue show cause notice under Section 142 of the Act to the Electricity Board official for issuing the clarification in circular dated 25.6.2010.
- 2.8 Aggrieved by the above order of the State Commission dated 28.12.2011, the Appellant have filed these Appeals and by the IAs are seeking interim orders for the stay of the impugned order.
3. The Ld. Sr. Counsel for the Appellants argued that the State Commission on one hand decided to proceed against the Electricity Board's official under Section 142 of the Act for usurping the authority of the Commission in issuing clarification dated 25.6.2010 and on the other hand allowed effect of the clarification retrospectively with effect from 25.6.2010. It is further contended that the clarification on this issue should take effect only w.e.f. 28.12.2011 and not from 25.6.2010 since it was only by the impugned order, the clarification was approved. He further submitted that the

Board would rework the bills based on their clarification dated 25.06.2010 from the date of clarification and would impose excess demand and excess energy charges on the Applicant's members and in that event the members of applicant's associations would be gravely affected if demands were made and collected. Further, it is pointed that the State Commission itself during the proceedings before it had granted stay pending disposal of the petition.

4. Ld. Counsel for the Electricity Board argued vehemently opposing grant of stay. According to him, if the full supplied energy is taken for deemed demand calculation, instead of the adjusted energy, then the wind energy generator having banking facility will enjoy double benefit of deemed demand causing loss to the Electricity Board.
5. We have heard and carefully considered the submissions of both parties. Having regard to the facts and circumstances of this case, we find that there is a prima facie case to stay the operation of the impugned order passed on the basis of the clarification as given by the Electricity Board with effect from

25.6.2010 for calculation of penalty for excess demand and excess energy. The balance of convenience is also in favour of the Appellants. The interim relief sought for in these interlocutory applications is against collection of penalty and not the normal electricity charges due to the Electricity Board. At the same time, we should ensure that the Electricity Board is protected from any financial loss caused to them due to this interim order.

6. After considering the rival contentions of the parties and the material on record, we are inclined to restrain the Electricity Board from collection of excess energy charges and excess demand charges in terms of the clarification dated 25.06.2010 issued by the Electricity Board for the period till the passing of the impugned order dated 28.12.2011.
7. However, in case the Appeals are dismissed and the impugned order is confirmed by this Tribunal, the Appellants will be liable to pay the penalty for excess energy and excess demand charges as per the impugned order along with interest for delay in payment. We make it clear that the

excess energy charges and excess demand charges could be levied by the Electricity Board in terms of its circular dated 25.6.2010 only with effect from the date of impugned order i.e. 28.12.2011.

- 8. The IAs no.105 of 2012 and 119 of 2012 are allowed with the above directions.**

Pronounced in open court on 3rd day of May, 2012

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

REPORTABLE/NON-REPORTABLE

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