

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under Section 82 (1) of the Electricity Act 2003
Central Act 36 of 2003)

PRESENT:-

Thiru.S.Kabilan	... Chairman
Thiru.K.Venugopal Member
Thiru. S. Nagalsamy Member

I.A. No.1 of 2010
in
M.P. No. 36 of 2010
and
M.P. No.36 of 2010

1. M/s. Indian Wind Power Association
Door No. E, 6th Floor, Tower -1
Shakthi Towers
No.766, Anna Salai
Chennai – 600 002.
2. G.R. Natarajan & Co.
1, Jawaharlal Nehru Street
T. Nagar
Chennai – 600 017.
3. R.K. Textiles
292, Mahatma Gandhi Road
Karur – 639 002.
4. Asian Fabricx Private Ltd.
1D, Pugalur Road
Karur – 639 001.
5. Allied Textiles
5, Kamadenu Nagar
Pugalur Road
Karur – 639 001.

6. Sri Ramavilas Weaving Factory
SF No. 2262, Pari Nagar
Chinna Andan Koil Street
Karur – 639 002.
7. Aravind-A-Traders
52, 5th Cross
Sengunthapuram
Karur – 639 002.
8. James Textile
S.F. 2197, Sri Muthu Nagar
Chinnandan Koil Road
Karur – 639 002.
9. Arvind Wind Farm
52, 5th Cross
Sengunthapuram
Karur – 639 002.
10. Arun Wind Mill
2A, 12th Cross
Sengunthapuram
Vivekananda Nagar
Karur – 639 002.
11. Aditya Wind Farms
50, 5th Cross
Sengunthapuram
Karur – 639 002.

.... Petitioners

(Thiru. Rahul Balaji, Advocate for Petitioners)

Vs.

1. Tamil Nadu Electricity Board
Rep. by its Chairman
Anna Salai
Chennai – 600 002.
2. The Chief Financial Controller
Revenue
Tamil Nadu Electricity Board
No.800, Anna Salai
Chennai – 600 002.

... Respondents

(Thiru.H.S. Mohammed Rafi, Advocate for Respondents)

Dates of hearing : 17-8-2010, 7-9-2010, 19-10-2010, 7-12-2010, 12-1-2011 and 7-3-2011

Date of order: 20-4-2011

M.P. No.36 of 2010 came up for final hearing before the Commission on **7-3-2011**. The Commission upon perusing the above petition and other connected records and after hearing both sides passes the following:-

ORDER

1. **Prayer in M.P. No.36 of 2010:-**

To punish the Respondent Board, its officials for their failure to comply with the orders issued by this Hon'ble Commission in making payment to the generators due under the Energy Purchase Agreement within a period of 30 days and pass such further or other orders as the Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. **Prayer in I.A. No.1 of 2010 :-**

To issue an interim direction directing the Respondent Board to forthwith make payment of the sums due to the Petitioner generators for energy supplied under the respective Energy Purchase Agreement together with interest at 1% for every month from the respective due date of the respective bills.

3. **Facts of the case :-**

3.1 The Petitioners 2 to 11 are the members of the First Petitioner Association and they are engaged in generation of power through Wind Energy Generators

and the First Respondent is the principal purchaser of power generated by the Wind Energy Generators.

3.2. The Petitioners have entered into agreements with the Respondent, Tamil Nadu Electricity Board for sale of the energy generated through their Wind Energy Generators subject to the terms and conditions in the respective Energy Purchase Agreements.

3.3 The Respondents failed to make prompt payment towards the power supplied by the Petitioners by not making payments within a period of 30 days as agreed to in the Energy Purchase Agreements.

3.4 Even the delayed payments were being made by the Respondents without payment of any interest.

4. **Contentions of the Petitioner:-**

4.1 Clause 5 of the Energy Purchase Agreement clearly mandate providing payment within the stipulated time.

“Clause 5:

(a) The Wind Energy Generator agrees to raise bill on the distribution licensee for the energy generated and fed into the grid after deducting the energy imported from the grid.

(b) The payments to Wind Energy Generator in respect of the energy supplied shall be made by the Board within the same period as provided by the Board to recover payments from its HT Industrial consumers”

4.2. The Commission, in its tariff order on wind energy, namely, Order No.1 of 2009 has specifically held that in case of NCES generation wheeling power to distribution licensee, generator will raise the bill every month for the net energy supplied after deducting the charges for start-up power, reactive power charges etc. and the distribution licensee is required to make payment to the generators within 30 days. Delayed payment beyond 30 days is liable for interest at 1% per month.

4.3. In para 8.12 of the tariff order, the Commission specifically adverted to payment security and security deposit after referring to the National Tariff Policy which requires adequate and bankable security arrangement to the generating companies with penalty of 1% per month for delayed payment by the licensee.

4.4 The Respondent Board has, however, failed to make payments despite reminders by the Petitioners and even when payments are forthcoming, it is without any interest. Such an action on the part of the Respondent is in clear violation of the orders of this Hon'ble Commission.

5. **Contentions of the Respondent Board in Counter Affidavit filed by them:-**

5.1 The Petitioners cannot seek to punish the Respondents under Sections 142 and 146 of the Electricity Act, 2003 for allegedly not making the payment to the generators within the period of 30 days, since ingredients of the said sections are not attracted in this case.

5.2 The Tamil Nadu Electricity Board has filed an appeal petition before the Appellate Tribunal for Electricity vide Appeal No. 98 of 2010 against the said tariff order dated 20-3-2009 in Order No.1 of 2009 passed by Tamil Nadu Electricity Regulatory Commission praying to set aside the same. A final order of the Appellate Tribunal for Electricity in this regard is awaited as the appeal is pending disposal.

5.3 Finding merit, the above appeal was admitted on 14-9-2010 and posted to 28-10-2010. In as much as the Board has been duly pursuing the appeal remedy before the appropriate Appellate Forum, the other prayer of the Petitioners to punish the Respondents would have to be dismissed in the interest of justice.

5.4 All the claims made by the Petitioners as per the statement furnished in the petition have been fully paid totaling Rs.14.32 crores. Therefore, the prayer for directing payment to the generators within a period of 30 days has become infructuous since the payments were already released.

5.5 The delay in releasing the payment is neither willful nor wanton. Among other things, due to financial constraint faced by the Board in the recent past, it could not pay the amount within the time frame as fixed by this Hon'ble Commission. However, this Hon'ble Commission was pleased to issue tariff revision with effect from 1-8-2010 vide Tariff Order No. 3 of 2010 dated 31-7-2010 "Determination of tariff for generation, intra-state transmission and distribution", as such it is expected that the Board will get additional revenue in the forthcoming months and will be in a better position to some extent to pay the dues to the Petitioners as far as possible keeping the time frame.

5.6 With regard to the interest for delayed payment, Board is awaiting the orders of the Appellate Tribunal for Electricity in the appeal petition filed against the Order No.1 of 2009 dated 28-3-2009 of this Hon'ble Tamil Nadu Electricity Regulatory Commission and once a finality is reached in this regard, payment, if any involves this head will be considered.

6. **Findings of the Commission:-**

6.1 Some of the petitioners are covered by Order No.3 dated 15-5-2006 of the Commission and some by Order No.1 dated 20-3-2009 of the Commission.

6.2. Clause 10.15 of Order No.3 of 2006 reads as follows:-

“The payments to the generators in respect of energy supplied shall be made by the distribution licensee within the same period as provided by the distribution licensee to recover payments from its industrial consumers.”

The period stipulated for recovery of dues of HT consumers is seven days. Therefore this clause would mean that the TNEB is expected to make payment within seven days to the wind energy generator. The clause is silent on interest liability.

6.3. Clause 8.11 of Order No.1 of 2009 reads as follows:

“The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest @ 1% per month”

This Order explicitly stipulates the interest liability.

6.4. It is significant to note that the TNEB is entitled to charge its consumers for delayed payment of their dues @ 1.5% per month in accordance with Clause 5(4) of the Tamil Nadu Electricity Supply Code 2004 of the Commission. Therefore, it is logical that even where there is no specific provision in the Orders of the Commission on delayed settlement of bills of generators by TNEB, liability for interest should be deemed to accrue.

6.5. In this context, we refer to Section 34(1) of the Code of Civil Procedure 1908.

“(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six percent per annum, as the court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six percent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I: In this sub-section, “nationalized bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970),

Explanation II: For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability”

6.6 Settlement of bills of generators by the TNEB has been in arrears for about eight months now and therefore interest liability would mostly be for this period. We have ascertained from the State Bank of India the interest rate applicable for commercial transactions. This is in the range of 12.75% to 13%

per annum. Therefore, 1% per month would not be unreasonable for delayed payment by TNEB.

6.7 As regards payment of principal by the TNEB the Petitioners argue that Order No.1 of 2009 of the Commission stipulates settlement of bills by TNEB within 30 days and therefore if payment is delayed beyond 30 days it would amount to violation of Orders of the Commission. In such a context, they say, the Commission is empowered to direct the TNEB to make payment. While it is true that the Order of the Commission provides for settlement of bills by the TNEB within 30 days, the same Order stipulates interest of 1% per month for delayed payment. We believe that delayed payment would attract interest and nothing beyond that. The payment itself cannot be forced by the Commission.

6.8. The petitioners pray for invocation of Section 142 against TNEB. This situation would arise only, if despite specific provision in Order No.1 of 2009, the TNEB has not paid interest. Petitioners may submit specific violations of the Order for proceeding under Section 142.

6.9. As regards cases not covered by Order No.1 of 2009, the present order of the Commission enables the petitioners to raise a claim of interest. If such claim is not honoured, the petitioners may approach the Commission with specific complaints of violation of the Order.

7. **Direction :-**

In the light of the findings in paragraphs 6.1 to 6.9 above, the TNEB is directed to pay interest on delayed settlement of bills either as per Order No.1 of 2009 or as per the provision of Code of Civil Procedure 1908 at the rate of 1% per month.

8. **Appeal:-**

An appeal against this order lies to the Appellate Tribunal for Electricity as per section 111 of the Electricity Act, 2003 within a period of forty five days.

(Sd.....)
(S. Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

(Sd.....)
(S.Kabilan)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity Regulatory Commission

