

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.11 of 2012

Dated: 17th April, 2012

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

In the Matter of:

- 1. The Chairman, Tamil Nadu electricity Board(Now Tamil Nadu Generation and Distribution Corporation Ltd.,)
144, Anna Salai,
Chennai-600 002.**

- 2. The Chief Financial Controller Revenue
Tamil Nadu Electricity Board(Now Tamil Nadu Generation and Distribution Corporation Ltd.,)
7th Floor, NPKRR Maaligai, No.144, Anna Salai,
Chennai-600 002.**

.....Appellant (s)

Versus

- 1. M/s Indian Wind Power
Association
Door No.E, 6th Floor,
Tower 1, Shakthi Towers,
No.766, Anna Salai,
Chennai-600 002.**

- 2. M/s. G.R. Natarajan & Co.,
1, Jawaharlal Nehru Street,
T.Nagar, Chennai-600 017.**

- 3. M/s.R.K. Textiles,
292, Mahatma Gandhi Road,**

Karur -639 002.

4. **M/s.Asian Fabricx Private Limited**
1D, Pugalur Road, Karur – 639 002.
5. **M/s. Allied Textiles,**
5, Kamadenu Nagar,
Pugalur Road,
Karur – 639 001.
6. **M/s. Sri Ramavilas Weaving Factory,**
SF.No.2262, Pari Nagar,
Chinna Andan Koil Street,
Karur – 639 002.
7. **M/s. Aravind – A - Traders**
52, 5th Cross, Sengunthapuram,
Karur -639 002.
8. **M/s. James Textiles**
SF.2197, Sri Muthu Nagar,
Chinnanandan Koil Road,
Karur – 639 002.
9. **M/s. Aravind Wind Farm**
52, 5th Cross
Sengunthapuram,
Karur – 639 002.
10. **M/s. Arun Wind Mill**
2A, 12th Cross, Sengunthapuram,
Vivekananda Nagar,

Karur – 639 002.

**11. M/s Adiya Wind Farms
50, 5th Cross, Sengunthapuram,
Karur – 639 002.**

**12. Tamil Nadu Electricity
Regulatory Commission
TIDCO Office Building
No.19 A, Rukmini Lakshipathi Salai
Egmore, Chennai-600 008.**

.....Respondents

**Counsel for the Appellant(s):Mr. S. Vallinayagam
Ms. Shweta Mishra**

**Counsel for the Respondent(s):Mr. Rahul Bajaj
Mr. Senthil Jagadeesan
Mr. Krishna Dev**

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. The Chairman and Chief Financial Controller of the Tamil Electricity Board(Now Tamil Nadu Generation and Distribution Corporation Ltd) are the Appellants.
2. This Appeal has been filed by the Appellants as against the impugned order passed by the Tamil Nadu State Commission holding that the Appellants are liable to pay interest on the delayed payment to the Wind Power Generators, the Respondents.

3. The short facts are as follows:-

- a) The Appellant Tamil Nadu Electricity Board is the Principal Purchaser of power generated by the Wind Energy generators.
- b) Respondent -1 is the Wind Power Association.
- c) Respondents -2 to 11 are the members of M/s Indian Wind Power Association, the Respondent-1.
- d) Tamil Nadu State Commission is the Respondent-12.
- e) The Appellant entered into the agreements with the Respondents, the Wind Power Generators for sale of the energy generated by them subject to the terms and conditions in the respective Energy Purchase Agreements. The Appellants failed to make prompt payment within a period of 30 days as agreed to by them in the energy purchase agreements and even the delayed payments were made by the Tamil Nadu Electricity Board without the payment of any interest.
- f) Therefore, the Respondents, Wind Power Generators filed a petition before the State Commission for directing the Electricity Board, the Appellant, to make the payment within a period of 30 days' time and to make payment of interest, for delayed payment. They also prayed for punishing the Electricity Board for their failure to comply with the orders passed by the Commission with reference to the payment.

- g) The State Commission after hearing the parties though did not incline to take penal action under section 142 of the Act,2003 directed Tamil Nadu Electricity Board to pay interest on delayed settlement of the bills through the impugned order dated 20th April,2011.
 - h) Challenging the said order the Tamil Nadu Electricity Board has filed this Appeal.
 - i) According to the Appellant, there is no clause relating to the payment of interest on delayed payment either in the Energy Purchase Agreement entered into between the parties or in the order passed by the State Commission in order No.3 of 2006 dated 15.5.2006, which covers the transaction of the Wind Power Generators with the Electricity Board and as such the State Commission is not justified in directing the payment of interest on delayed payments.
4. Though the Appellant raised several points including the jurisdiction in the Appeal, ultimately he confined himself to the point that even assuming that there was a provision for payment of interest for delayed payment in the State Commission's order No.1 of 2009 dated 20.3.2009. this would apply only to the Respondent-6 i.e. M/s Shri Ramavilas Weaving Factory, Karur, the Wind Power Generator, who was commissioned after 19.9.2008 and not to the other Wind

Power Generators who are Respondents-1 to 5 and 7 to 11, who were commissioned prior to 19.9.2008.

5. It is the specific stand of the Appellant now taken that the generators of the Respondents-2 to 5 and 7 to 11 were commissioned before 19.9.2008 while the tariff order No.1 dated 20.3.2009 specifies that the Wind Energy Generators commissioned on or after 19.9.2008 will alone become eligible for the benefits of this order.
6. It is further contended by the Appellant that the Respondent-6 was commissioned on 30.1.2009 and the energy purchase agreement dated 30.1.2009 entered between the parties, specifies the terms mentioned in order No.3 of 2006 only and as such, the impugned order passed by the State Commission giving the retrospective effect to the tariff order No.1 of 2009 dated 20.3.2009 to all the Wind Power Generators, the Respondents, is not valid in law.
7. In reply to the above submissions, the Learned Counsel for the Respondents while justifying the impugned order that the provisions of the tariff order No.1 of 2009 dated 20.3.2009 have specifically stipulated the payment of interest on delayed payments and it is settled law that a person deprived of use of money to which he is legitimately entitled, during a particular period, has a right to be compensated by claiming the interest for that period and therefore, the impugned order is perfectly justified.

8. In the light of the above rival contentions, the question that arises for consideration is as follows:-

“Whether the Respondents, the Wind Power Generators are entitled for the payment of interest on delayed payments made by the Appellant for the purchase of power from the Wind Power Generators?”

9. The Respondents, being Wind Power Generators have entered into Energy Purchase Agreements with the Appellants. Clause 5(b) of the agreements provides that the payments to the Wind Power Generators in respect of the power supplied shall be made by the Electricity Board within the same period as provided by the Board to recover payments from its HT industrial consumers. The period stipulated for recovery of dues from HT consumers is 7 days. The Appellants admittedly failed to make such payments within the stipulated 7 days to the Respondents and they made delayed payments long after the expiry of stipulated date without making payment towards interest on delayed payment.

10. Clause 5(4) of the Tamil Nadu Electricity Code 2004 entitles the Electricity Board to charge interest of 1.5% per month on delayed payment in the case of HT consumers. Similarly, Clause 5(b) of the Energy Purchase Agreement provides that the payments to the Wind Power Generators in respect of the power supplied by the them to the Board shall

be made by the Electricity Board within the same period as provided by the Board to recover payments from its HT industrial consumers.

11. Therefore, the Appellant is bound to pay within the same period as provided to HT consumers. It has not paid within time. It ought to pay interest on delayed payment. If it is claimed that the Board is not liable to pay the interest on delayed payment, there will be no sanctity of clause 5(b) of the Agreement imposing the time frame for payment. Therefore, the Appellants can not claim for an exemption on payment of interest on admitted delayed payments, especially when the Board is entitled for the same from consumers.
12. The provisions of tariff order No.1 of 2009 dated 20.3.2009 which govern all Wind Power Generating Stations commissioned on or after 19.9.2008 have specifically stipulated payment of interest on delayed payments in clause 8.11 of the agreement. That apart, clause-8.12 provides that stipulation regarding provision of bankable security in favour of the Generators as required by the order No.3 of 2006 dated 15.5.2006 by the distribution licensee was found to be impracticable. Therefore, the penalty of 1% per month was stipulated for delayed payments to serve the ends of justice.
13. It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would

mean that any payments made after the said time period would be subject to the payment of interest as indicated above. As pointed out by the learned Counsel for Respondents, a person deprived of the use of money to which he is legitimately entitled for a particular period has got a right to be compensated by way of interest. This principle has been laid down by the Hon'ble Supreme Court in Constitution Bench Judgement in Central Bank of India Vs Ravindra reported in 2002 Vol.1, SCC 367.

14. As held by the Hon'ble Supreme Court, the delayed payments without any entitlement to interest on the same, will lead to a situation whereby the Appellant would not be inclined to pay in time.
15. In this context, it is to be pointed out that the very same issue has been raised before this Tribunal in Appeal No.98 of 2010 by the Appellant Electricity Board as against the order directing the payment of interest. This Tribunal through the judgement dated 18.3.2011 dismissed the said Appeal confirming the tariff order No.1 of 2009 dated 20.3.2009 holding that the Electricity Board is liable to pay the interest for the delayed payment.
16. In the present case, even though there is no express stipulation with regard to the interest, as pointed out by the Commission, the Commission has invoked the powers, as provided in the relevant sections of CPC to order the same.

In the light of the various principles regarding the grant of interest laid down by the Hon'ble Supreme Court in the case of Secretary, Irrigation Department, Government of Orissa Vs G.C. Roy reported in 1992 Vol.1 SCC 508, the Respondent Wind Power Generators are entitled to receive interest on the admitted delayed payment.

17. In any power project, one of the important aspects is promptitude in payment since the delays would seriously affect the viability of the project. All these projects are substantially funded through finances obtained from various funding organisations require regular repayment of principal loan amount with interest by the generators. Only if regular payments are made for the power generated and supplied, the loans can be services long with the promised return of investment.
18. The tariff order No.3 of 2006 dated 15.5.2006 passed by the State Commission as well as the Energy Purchase Agreements have specifically provided for certain period for payment of such dues, the Appellants admittedly have not paid the amount in time but in express violation of relevant terms they have substantially delayed the payments for the power supplied to them.
19. It has been contended that Respondent-6 alone is entitled to the benefit of tariff order No.1 of 2009 dated 20.3.2009 and others are not entitled and their projects have been

commissioned prior to 19.9.2008. As a matter of fact, clause 8.11 of this order clarifies that any payment made after a period of 30 days is liable to be paid along with interest of 1% per month. That apart, when the question has been raised with regard to the liability to pay interest, this Tribunal in Appeal No.23 of 2010 by the judgement dated 9.7.2010 granted interest on the principal amount and thereby confirming the jurisdiction of the Commission to award interest. The relevant portions of the order passed in Appeal No.23 of 2010 dated 9.7.2010 are as follows:-

“The only question that arises for the consideration before this Tribunal whether the State Commission was correct in rejecting the claim for the interest made by the Appellant on the ground that the claim was belated, then it was the TNEB who was solely responsible for the delay in implementing the order of the Commission, resulting in less amount being paid to the Appellant. We have heard the learned Counsel for the parties. It is not disputed that the principal amount which has been claimed through petition filed in August, 2009 has been ordered to be paid to the Appellant by the Respondent. In regard to the interest the Commission rejected the claim merely because the application for interest was belatedly made. As correctly pointed out by the learned Counsel for the Appellant that the Commission did not give any finding with regard to the claim made by the Appellant in regard to interest. It is not disputed that the claim for interest was made during the pendency of the main application. As a matter of fact the interim application has been filed in November, 2009 and the Commission’s order has been passed on 16th November,2009 rejecting the claim for the interest. The only reason given by the Commission for rejecting the claim for interest is that the said claim was

belatedly made. If this ground for rejection is accepted as a valid ground for rejecting the claim for interest, it will apply to the claim of principal amount as well. Admittedly, the findings referred by the Commission is that Appellant is entitled to the return of the principal amount, then it may not be proper on the part of the Commission to hold that the claim for the interest has been belatedly made. It is settled law that the party is entitled to interest for the said amount. In the light of the said decision of law, we are of the view that the findings referred to by the Commission with regard to the rejection of the claim of interest is liable to be set aside. However, in the facts and circumstances of the case, we are of the view that Appellant is entitled to interest @ 10% instead of 18% as claimed by the Appellant.

20. The ratio decided by this Tribunal would squarely apply to the present case as well.
21. Hence, our conclusion is as follows:
“The Wind Power Generators are entitled for payment of interest on delayed payment made by the Appellant for the purchase of the power from the Generators.”
22. In view of the above, the Appeal is liable to be dismissed as devoid of merits. Accordingly, this Appeal is dismissed.
23. However, there is no order as to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 17th April, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~