

**In the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)**

Appeal No. 210 of 2014

Dated: 26th February, 2016

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

In the Matter of:

**Indian Wind Power Association
(Maharashtra State Council)**

Empire House, 214, D.N.Road,
A.K. Nayak Marg, Fort,
Mumbai – 400 001

... Appellant(s)/Petitioner

Versus

1. Maharashtra Electricity Regulatory Commission

World Trade Centre No.1, 13th Floor,
Cuffe Parade, Colaba
Mumbai – 400 001.

2. Maharashtra State Electricity Distribution Co. Ltd.

5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051

... Respondent(s)

Counsel for the Appellant(s) : Mr. M. G. Ramachandran,
Ms. Ranjitha Ramachandran, Ms. Poorva
Saigal, Mr. Shubham Arya, Ms. Anushree
Bardhan, Ms. Dipali Sheth, Mr. Anurag
Sharma and Ms. Swagatika Sahoo

Counsel for the Respondent(s) : Ms. Deepa Chawan, Mr. Buddy
Ranganadhan, Mr. Nirav Shah,
Mr. Kiran Gandhi, Mr. Ramni Taneja,
Ms. Rakhi Banerjee, Mr. Ravindra and
Mr. Umang Jain

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

This appeal under section 111 of the Electricity Act, 2003 has been filed by the Indian Wind Power Association (**appellant/petitioner**) against the order dated 20.06.2014 (**Impugned Order**), passed by the Maharashtra Electricity Regulatory Commission (in short **State Commission**) in case No.93 of 2013 whereby the petition filed by the appellant/petitioner for seeking directions against the Maharashtra State Electricity Distribution Co. Ltd. (in short **MSEDCL**), respondent No.2, herein, to enter into Power Purchase Agreement (**PPA**) at tariff approved for the FY 2013-14 as per order dated 22.03.2013 in Case No.6 of 2013 and Commercial Circular No.196 dated 29.04.2013 issued by the MSEDCL (distribution licensee) has been disposed of/dismissed with the following observations:

“COMMISSION’S RULING

18. *Following are the rulings of this Commission in the present matter:*

18.1 *In view of the fact that EPA has been signed inclusive of the above modifications by MSEDCL and wind power producers, the Commission is of the view that, the prayer of the Petitioner to direct Respondent No.1 to enter into EPA at a Tariff determined by this Commission vide Order dated 22 March, 2013 in Case No. 6 of 2013 with the wind power producers, so desirous has become infructuous.*

18.2 *Further, the Commission observes that the Respondent No.1 has already started signing EPA with wind power producers in the State. Therefore, the question of initiating proceedings against the officers of the Respondent No.1 under section 129, 142 and 149 of the Electricity Act, 2003 in the present matter does not arise.*

In view of the above, Case No. 93 of 2013 stands disposed of.”

- 02) Thus the State Commission, vide Impugned Order dated 20.06.2014 had disposed of the petition of the appellant/petitioner holding that the prayer of the appellant/petitioner to direct respondent No.2, a DISCOM, to enter into Energy Purchase Agreement (**EPA**) at a tariff determined by the State Commission, vide order dated 22.03.2013 in Case No. 6 of 2013 with the Wind Power Producers has become infructuous and further since the distribution licensee had already started signing EPA with Wind Power Producers in the State of Maharashtra, the question of initiating proceedings against officers of respondent No.2 under section 129, 142 and 149 of the Electricity Act, 2003 does not arise.
- 03) The appellant/petitioner filed the aforesaid petition, being Petition No.93 of 2013 dated 30.07.2013, before the State Commission seeking directions against MSEDCL, respondent, a company engaged in distribution of electricity in the State of Maharashtra, to enter into power purchase agreement at the tariff approved for FY 2013-14 as per the Order dated 22 March, 2013 in Case No.6 of 2013 and the Commercial Circular No. 196 dated 29 April, 2013 issued by the Respondent MEDA a Government Organization established for the purpose of harnessing and developing alternate energy and nodal agency for developing and encouraging Renewable Energy in the State of Maharashtra. Government of Maharashtra was later impleaded as a party during the course of the proceedings in the matter.
- 04) This petition has been dismissed/disposed of by the Impugned Order of the State Commission on the afore noted grounds.
- 05) The appellant is Indian Wind Power Association (**IWPA**), non-profit organization set up in 1996 and is an association of wind power developers/generators. The appellant since its inception has worked consistently, towards removing barriers to wind power development and creation of an enabling regulatory and policy environment for investments in this sector. The appellant is working closely with several

national industry bodies *inter alia* the Indian Renewable Energy Development Agency, Ministry of New and Renewable Energy, Ministry of Power, Ministry of Environment etc. The respondent No.1 is the State Commission which is authorized to discharge various functions as provided under various sections of the Electricity Act, 2003. The respondent No.2 is a distribution licensee in the State of Maharashtra.

- 06) The relevant facts for the purpose of deciding this appeal are as under:
- 6.1) That Industry, Energy and Labour Department, Government of Maharashtra issued wind policy dated October 14, 2008 (2008 wind policy), which policy was amended by resolution dated 03.08.2009 by the Government of Maharashtra. The amended wind policy amongst other provided that it shall be binding on the promoters/developers/investors to sell 100% electricity generated from non-conventional sources to the licensee or a person in the State. More than 100 MW wind farm projects were commissioned till March 2013 post issuance of the new wind policy.
- 6.2) That MSEDCL, respondent No.2, the principal prospective buyer in the State had however delayed and refused to enter into a Power Purchase Agreement (PPA) with the Wind Power Generators, many of whom are the members of the appellant Association, for the FY 2013-14. Further despite the Maharashtra Electricity Regulatory Commission (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2010 (in short the **Tariff Regulations 2010**) and the order dated March 22, 2013 in Case No.6 of 2013 (Tariff Order) passed by the State Commission and Commercial Circular No.196 dated April 29, 2013 issued by respondent No.2, the distribution licensee, emphasizing the said tariff order, the respondent No.2 did not sign or enter into any Power Purchase Agreements with the wind power generators.
- 6.3) That the respondent No.2, instead of signing a PPA, filed Case No.65 of 2013 before the State Commission and sought discontinuance of zone-

wise classification and fixation of a single tariff for procurement of tariff from wind generators through competitive bidding.

- 6.4) That the appellant/petitioner, during the hearing of Case No.65 of 2013 before the State Commission, submitted that the said Petition was filed with malafide intention of delaying PPAs as respondent No.2 was very well aware that there were no competitive guidelines issued by Government of India in respect of wind power. Further the respondent No.2 was well aware that most wind power development in the State of Maharashtra has taken place in the jurisdictional distribution circles of respondent No.2 and wind energy generators had no other alternative but to connect to the grid of respondent No.2. Further wind power by nature being infirm is required to be generated as and when adequate wind is available failing which it is a natural loss as 'generation once lost is lost forever'. Further respondent No.2 was taking advantage of its monopolistic position/situation of having at its disposal the wind power fed into the grid continuously especially during high wind season and the developers being not paid for at all, in view of the imbroglio/dispute created by respondent No.2 by filing infructuous petition No. 65 of 2013.

After hearing both the parties, the learned State Commission vide order dated 09.12.2013 dismissed the said petition, being Petition No.65 of 2013 and M.A. No.13 of 2013 of the said respondent No.2.

- 6.5) That the learned State Commission decided the tariff for FY 2013-14 (for the 4th year of the 1st control period) under Regulation 8 of the Tariff Regulations 2010, vide order dated 22.03.2013 in Case No. 6 of 2013 (tariff order). The respondent No.2, in compliance of the order dated 22.03.2013 in Case No. 6 of 2013, issued Commercial Circular No. 196 dated 29.04.2013 (Circular 196) emphasizing the said tariff order, the respondent No.2 at first instance refused to enter into a PPA with wind energy generators for FY 2013-14 on frivolous grounds.

6.6) that vide daily order dated 01.10.2013 the State Commission directed respondent No.2 to comply with tariff order dated 22.03.2013 and submit its action on the same. The respondent No.2 in response agreed to enter into a long term PPA, for FY 2013-14 as per the rates of the tariff order but with a malafide intention deviated from terms and conditions of a PPA approved by the State Commission and suo motu without approval/sanction of the State Commission added the following clauses in the PPA :

- d. Proviso added to Section 11.04: payments**
Provided that the payments to the seller for the period from the date of commissioning of the project up-to 30.09.2013 will not be governed by clause / Section No. 11.04 of EPA. The payment for this period will be effected by MSEDCL on best effort basis without interest. The terms and conditions of the Section 11.04: Payments, shall be applicable for the energy injected into grid” w.e.f. 01.10.2013.
- e. Section 4.03 : First Right of Refusal Post Expiring EPA**
After completion of EPA tenure of 13 years from the date of commissioning of the wind power project, MSEDCL, shall reserve First Right of Refusal to procure power at the same rate (MERC determined tariff as may be applicable for the said wind power project as per MERCRE tariff order dated 22.03.2013 in Case No. 6 of 2013) or the rate as may be decided by the MERC whichever is lower till the end of life of wind power project (i.e. 20/25 years as the case may be).
- f. (Added as Section 4.04 & 11:07)**
*It is mutually agreed that the above said terms and conditions shall form integral part of this Energy Purchase Agreement.”
 (“Impugned Clauses”)*

6.7) that in the meantime, Case No.93 of 2013 (**Impugned Petition**) was filed by the appellant/petitioner before the State Commission on 30.07.2013 for seeking directions against respondent No.2 for signing PPAs for wind

power generators as per Tariff Regulations and Circular No.196 issued by respondent No.2 itself.

- 6.8) That while 93 of 2013 was still pending the State Commission pronounced order dated 07.04.2014 in another Case, being Case No.92 of 2012, which was in respect of wind policy matter that the projects whose PPAs have not expired, may be given an option to extend PPA to project life. The State Commission further clarified that such extension is an option available to both parties and is not a compulsion.
- 07) We have heard Mr. M. G. Ramachandran, learned counsel for the appellant and Ms. Deepa Chawan and Mr. Buddy A. Ranganadhan for the respondents. We have gone through the written submissions filed by the rival parties and perused the material available on record including the impugned order.
- 08) The following two issues arise for our consideration:
- a) Whether Respondent No.2 has the power to hold that the modification of PPA without its approval is valid on the grounds that some of the wind generators have accepted it?**
- b) Whether the directions given by Respondent No.2 under the Impugned Order will also be applicable to the wind generators who had not signed the PPA with Maharashtra State Electricity Distribution Company Limited (respondent No.2/MSEDCL) prior to the Impugned Order?**
- 09) Since both these issues are interwoven, we are taking and deciding them together. The following contentions have been raised on behalf of the appellant on the said issues:
- 9.1) that the respondent No.2, distribution licensee, *suo motu*, without prior approval of the State Commission and contrary to the earlier orders of the State Commission and this Appellate Tribunal, had modified the

standard terms and conditions of Power Purchase Agreement for wind power generators for FY 2013-14 incorporating therein the following contentious clauses:

- “a. Proviso added to Section 11.04: Payments**
Provided that the payments to the seller for the period from the date of commissioning of the project up-to 30.09.2013 will not be governed by clause / Section No. 11.04 of EPA. The payment for this period will be effected by MSEDCL on best effort basis without interest. The terms and conditions of the Section 11.04: Payments, shall be applicable for the energy injected into grid” w.e.f. 01.10.2013. (emphasis added)
- b. Section 4.03: First Right of Refusal Post Expiring EPA**
After completion of EPA tenure of 13 years from the date of commissioning of the wind power project, MSEDCL, shall reserve Firt Right of Refusal to procure power at the same rate (MERC determined tariff as may be applicable for the said wind power project as per MERCRE tariff order dated 22.03.2013 in Case No.6 of 2013) or the rate as may be decided by the MERC whichever is lower till the end of life of wind power project (i.e. 20/25 years as the case may be). (emphasis added)
- c. (Added as Section 4.04. & 11:07)**
It is mutually agreed that the above said terms and conditions shall form integral part of this Energy Purchase Agreement.” (“Impugned Clauses”)

9.2) That after passing of the impugned order by the State Commission, the appellant had filed a clarification petition, being No.130 of 2014 seeking ostensible classification of impugned order dated 20.06.2014 with the following prayers:

- “a. Clarify whether the Order dated June 20, 2014 in Case No. 93 of 2013 in the matter of sanctioning the clauses of right of first refusal {section 4.03 of the EPA} post expiry of EPA of 13 years exclusively reserved to MSEDCL, payment for**

generation proceeds on best effort basis by MSEDCL and not to remit delayed payment interest for the generation effected up to September, 30, 2013 {proviso to section 11.04 of the EPA} applies only to the Energy Purchase Agreements executed by the wind energy generators till the date of the said Order and not to all the Energy Purchase Agreements pending to be executed for projects commissioned in FY 2013-14 and also for future financial years from 2014-15 onwards.

- b. Direct the respondent No.1 to delete the modified clauses viz. section 4.03 and proviso to section 11.04 of the EPA detailed above from the Energy Purchase Agreement to be executed with wind generators after the date of the Order and effect payments taking 60 days from JMR as date of invoice since the wind generators could not raise invoices for want of Energy Purchase Agreement though they were ready to execute agreement without the said sections as per MERC RE Tariff Regulations;*
- c. Direct MSEDCL not to discriminate between wind energy generators who accept the aforesaid sections / clauses viz. section 4.03 and proviso to section 11.04 of the EPA and those wind energy generators who abiding by the Regulations of the Commission, provisions of EA, 2003 and the earlier relevant orders of the Commission and Hon'ble APTEL desire the deletion of said sections/clauses viz. section 4.03 and proviso to section 11.04 from the EPA to be executed."*

9.3) The Petition No.130 of 2014, filed by appellant/petitioner, before the State Commission seeking ostensible clarification of the Impugned order dated 20.06.2014 in Petition No.93 of 2013 has been dismissed by the State Commission vide order dated 19.12.2014, which order has not been challenged. The learned State Commission, in its order dated 19.12.2014 in clarificatory Petition No.130 of 2014, filed by the appellant/association while disposing/dismissing the Petition, has observed that if wind developers and distribution licensee have already started signing energy purchase agreement, with mutually agreed terms

and conditions, the Commission does not find any merit in further directing the distribution licensee to sign the PPA with wind developers. Since the Commission in the Impugned Order dated 20.06.2014, in Petition No.93 of 2013 has not directed either party to enter into the energy purchase agreement with or without modified clauses, option has been left with either of the parties to enter into the PPA, hence, the Commission has not found it meritorious to direct the distribution licensee to delete the modified clauses in the PPA or not to discriminate between wind generators to sign the PPA with or without modified clauses.

9.4) That the preliminary objections of respondent No.2 is regarding maintainability of the instant appeal submitting that since the issues in the instant appeal and the clarificatory petition are the same and the State Commission had reserved the same matter for orders, the instant appeal should be rejected. There is no merit in the said preliminary objections of respondent No.2 since the appellant, in its rejoinder affidavit dated 05.11.2014, had stated that the prayer raised in the clarificatory petition is not the same as the one raised in the instant appeal and also the clarification would have no impact on the instant appeal. Further, since the clarificatory petition has been disposed of vide clarificatory order dated 19.12.2014, the said preliminary objection has no relevance.

9.5) That the State Commission decided tariff for the FY 2013-14, vide tariff order dated 22.03.2013 in Case No.6 of 2013. The appellant/petitioner filed the impugned Petition No.93 of 2013 with the following main prayers:

“a. Direct Respondent No.1 to enter into power purchase agreement with wind project developers with retrospective commencement of term thereof from April 1, 2013 in accordance with Order dated march 22, 2013 in Case No. 6 of 2013 read with

MERC RE Tariff Regulations, 2010 and its Commercial Circular No. 196 dated April 29, 2013;

- b. Direct Respondent No.1 to enter into power purchase agreement at the tariff decided by the Hon'ble Commission throughout the control period.
- c. Direct Respondent No.1 to consider 60 days from Joint Meter Reading date if Joint meter reading is not taken joint meter reading date in respect of projects in the vicinity be deemed as date of invoice for effecting payments to the wind power project developers and computing payment of interest for delayed payments.
- d. In the event, the Hon'ble Commission considers to grant to the Petitioner, relief in terms of prayer (a) above, then the Hon'ble Commission may direct Respondent No. 1 to pay interest @ 1.25% per month to the members of the Petitioner on the amounts due beyond 60 days from deemed date of invoice in terms of Prayer (c) above..
- e. To initiate proceedings against Respondent No.1 and its officers under Sections 129, 142 and 149 of the Electricity Act, 2003 for willful disobedience and for securing compliance of the Orders passed by the Hon'ble Commission;
- f. To refer the matter to the Hon'ble High Court for initiation of contempt proceedings against the Respondent No.1 and its officers; and
- g. Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case."

9.6) The main prayer of the appellant/petitioner in the impugned petition before the State Commission was to direct the respondent No.2 to enter into Power Purchase Agreement with the wind project developers with retrospective commencement of term thereof from April 01, 2013 in accordance with the tariff order dated 22.03.2013 in Case No.6 of 2013 read with MERC RE Tariff Regulations, 2010 and its Commercial Circular No.196 dated 29.04.2013 and further direct the respondent

No.2 to enter into Power Purchase Agreement at the tariff decided by the State Commission throughout the control period but the respondent No.2/DISCOM instead of signing the PPA filed a Petition, Case No.65 of 2013, before the State Commission seeking discontinuance of zone wise classification and fixation of a single tariff for procurement of power from wind generators through competitive bidding. The learned Commission after considering the objections of the appellant/petitioner and also hearing the parties concerned rejected the said petition being Case No.65 of 2013 of the respondent No.2 vide order dated 09.12.2013.

- 9.7) That the learned State Commission in the daily order dated 01.10.2013, during the proceedings of impugned petition, being Case No.93 of 2013, filed by the appellant/petitioner before the State Commission, directed the respondent No.2 to comply with the tariff order dated 22.03.2013 and submit its course of action for the same. The respondent No.2/DISCOM thereafter agreed to enter into long term PPAs for the FY 2013-14 as per rates of the tariff order dated 22.03.2013 in Case No.6 of 2013 but with a malafide intention had deviated from the terms and conditions of a PPA approved by the State Commission and the respondent No.2 *suo-motu* without approval/sanction of the State Commission added the afore said contentious clauses, namely (d) proviso added to Section 11.04: Payments, (e) Section 4.03: First Right of Refusal Post Expiring EPA and (f) added as Section 4.04 & 11:07 in the PPA.
- 9.8) That due to certain financial hardships faced by wind energy generators, who would have availed of financial assistance for setting up of wind power plants and in the absence of PPA and any payments being received for a long period of more than 12 months and fearing that their accounts with the bank would turn out to be a non performing asset and possibility of the lender even initiating actions for attachment of the assets and thus jeopardizing the entire business or the group business of such wind energy generators, some of the wind power developers started

signing the PPA with the above contentious clauses. The respondent No.2, a distribution licensee, insisted on such wind energy generators to give an undertaking that these clauses are acceptable to them. Some of the wind energy generators gave in to such coercion and duress. As the financial year in respect of the PPA contemplated had elapsed, some of the members of the appellant wind power association have also signed/agreed to sign the PPA under protest.

- 9.9) That the rationale tendered by respondent No.2 for addition of the impugned clauses in the PPA is that as per standard practice, the wind energy purchase and the claim of payment thereof becomes due prospectively after signing of PPA. The stand of the respondent was that all the prevalent clauses of the PPA will be given effect prospectively and after expiry of the PPA, the wind energy generators shall sell the wind energy to respondent No.2 at the same tariff or at tariff as may be determined by the respondent No.2, whichever is lower, for the balance life of the project and such purchase shall form a part of Renewable Purchase Obligation (RPO). With this view of the matter the DISOCM, respondent No.2, incorporated a clause in the PPA that post expiry of PPA, the first right of refusal would be with the respondent No.2 as the wind generators would have recovered substantial profit and the assets created by these generators logically shall become the property of the State since the consumers of State utility have consumed the expensive wind power, the State Government had provided various benefits to wind energy generators. Further since PPA was pending execution, as per respondent No.2 there could not be any question of any payment of interest and forced the wind power developers to accept the second impugned clause of payments for April 2013 to September, 2013 (it is pertinent to note that this is the high wind period and value of generation could be maximum for the year) would be paid on best effort basis without interest.

- 9.10) That while the impugned petition was still pending before the State Commission, the State Commission had pronounced order dated 07.04.2014 in another case No.92 of 2012 in respect of wind policy matter holding that the projects whose PPA had not expired may be given an option to extend PPA to project life. The State Commission further clarified that such extension is an option available to both parties and is not a compulsion.
- 9.11) That the State Commission after considering all the facts ought to have considered the legality of PPAs insisted by the respondent No.2 to be signed when the contentious clause therein were not approved by the State Commission, besides being arbitrary and burdensome.
- 9.12) That nowhere in the Electricity Act or any other statute, a provision exist that even if few or many developers or parties accept a position which is not in accordance with regulations, tariff orders or statute ought to be accepted by all the other developers who wish to abide by the provisions under the regulations and orders of the State Commission. Thus this important aspect has been overlooked by the State Commission while deciding the impugned petition merely on the ground that certain developers have expressed their willingness to sign the PPA with respondent No.2 with couple of contentious clauses having no prior approval of the State Commission. The other members of the appellant association should also follow the same course.
- 9.13) That respondent No.2 has raised preliminary objections including that the PPA falls under the contract realm and as the wind energy generators who protest against the impugned clauses in the PPA have already started to feed the electric power in the grid and hence have agreed to the terms of the PPA with the contentious clauses. The appellant being an

association are not bound by the contract, as the general rule is that no one but the parties to the contract are entitled to and bound by it.

- 9.14) That since the appellant is a wind power association and is constituted by many members thereof; the appellant association is fully competent to challenge the said newly incorporated contentious clauses in the PPAs, particularly when the said contentious clauses have never been approved by the State Commission.
- 9.15) That most of the installations of wind power plants are in the jurisdiction of respondent No.2 and as the wind energy generators had on the basis of the then regulatory regime established their wind power plants, the *suo-motu* modification is unjust, arbitrary and illegal.
- 9.16) That the PPA has been signed by wind generators under protest and dissent owing to circumstances under which they were placed by respondent No.2 and further due to delay in execution of the PPA, the wind energy generators had no option but to sign the PPA with the respondent No.2, even though the impugned clauses proposed in the PPA were not authorized or approved by the State Commission. Merely because some wind energy generators had accepted the impugned clauses under coercion and duress, and as per their business and financial conditions, it does not necessitate that the contentious clauses or modifications in the PPA are fair and just.
- 9.17) That the State Commission in its order dated 07.04.2014 in Case No.92 of 2012 stated that right of first refusal is available to both parties. Therefore, the impugned clause 4.03 in the PPA proposed by respondent No.2 according to which only respondent No.2 reserves the right of first refusal to procure power is neither in consonance with the regulatory regime nor is it provided in Tariff Regulations, 2010, therefore such

impugned clauses cannot be included in the PPA as it is illegal and arbitrary and both the parties shall have the right to first refusal post the termination/expiry of PPA.

9.18) That the learned State Commission in its order dated 07.11.2007 in Case No.85 of 2006 had admitted that in one of their earlier orders through oversight, the right of first refusal was reserved to respondent No.2 and therefore the State Commission rectified the apparent error in case of hydro power generators.

9.19) That this Appellate Tribunal in its order dated 01.10.2010 in Appeal No.1 of 2010 reiterated their earlier views, in its judgment dated 05.02.2008 in Appeal No.15 of 2007, on the payments to be made for energy fed in the grid upheld the views of the State Commission with the following observation:

“37(i)

(ii) *The perusal of the order dated 12.09.2006 passed by the State Commission and also the Judgment of the Tribunal passed on 05.02.2008 would reveal that both have given a categorical finding that the payment becomes due as and when the electricity is generated, fed into the grid and received by the Appellant, which amounts to sale. The categorical observation by the TribunalThe payment became due when the energy was received by the Appellant from the Members of the Association would clearly indicate that the liability of the Appellant to pay the amount for the electricity received by them accrues the moment the energy generated by the members of the Association was fed into the grid and the same is received by the Appellant. Consequently, it is to be held that the Appellant, distribution company, cannot hold back the payment for purchase of power which has already been received by them by simply stating that the bills have not been received (emphasis added).”*

(iii) *There is no controversy over the fact that the quantum of energy for which bill is to be raised as per the Joint Meter Reading is known to the Appellant and the rate of energy is as per tariff fixed by the State*

Commission, which is again known to the Appellant. Therefore, the Appellant should be in a position to make the payment within 45 days without waiting for any bill and to pay the interest for delayed payment beyond the said due date.....” (emphasis added)”

9.20) That the impugned order is patently erroneous so far as it holds that as most wind generators have signed the PPAs with modified/ contentious clauses, there is no need to intervene. The respondent No.2 should be directed to delete the impugned clauses vis-à-vis the members of the appellant who have signed the PPA with impugned clauses under protest.

9.21) That the State Commission is wrong in passing the impugned order on the basis that as some of the wind generators have signed the PPA with the objectionable clauses, all wind power developers are bound to accept the said contentious clauses. There is nothing but a perverse way of deciding the matter and rewarding respondent No.2 for its high handed conduct of compelling the wind generators to sign the PPA with objectionable clauses contrary to the earlier orders of the State Commission. The State Commission, instead, should have taken a serious view of the conduct of the respondent No.2 and penalized it for violating the orders of the State Commission.

9.22) That the State Commission ought to have appreciated the salient aspects of the matter instead of adopting virtually a no concern attitude as exhibited in the order :

“a) It was respondent No.2, which was consistently refusing to sign the PPA on the terms decided by the Respondent No.1. The wind power developers were repeatedly requesting the Respondent No.2 to sign the PPA. There was, therefore, a gross violation on the part of the Respondent No.2 in complying with the Orders of the State Commission.

- b) *The Appellant had then approached the Respondent No.1 and sought directions to Respondent No.2. In the facts and circumstances of the case the Respondent No.1 should have issued immediate directions to Respondent No.2 and also taken proceedings against Respondent No.2 for not acting as per the Orders of the State Commission.*
- c) *No Orders were being made by Respondent No.1 and in the meanwhile Respondent No.2 continued to defy the signing of the PPA as per the earlier decisions of the Respondent No.1.*
- d) *In the circumstances, wind power generators were placed in a precarious position threatening their very existence. Some of the wind generators had signed the PPA with objectionable Clauses having no other alternative.*
- e) *In the event the above cannot in any manner affect the rights of such of the wind Power Developers who had not signed the PPA.”*

10) **Per contra**, Ms. Deepa Chawan learned counsel for the respondent MSEDCL/distribution licensee, has in rebuttal submitted as under:

10.1) That since the previous tariff orders have not been challenged by the appellant, the appellant/Association is not entitled to any relief in this appeal.

10.2) That Impugned Petition was filed by the appellant/petitioner seeking direction to the DISCOM to enter into PPA at tariff approved for FY 2013-14 as per the tariff order dated 22.03.2013 in case No.6 of 2013 and Commercial Circular No.196 issued by the distribution licensee before the State Commission. Pending the Impugned Petition, the distribution licensee inserted the impugned clauses because the DISCOM wanted to modify the clauses during approval of the PPA proceedings.

- 10.3) That by filing the impugned Petition before the State Commission, the appellant wanted to alter the previous tariff orders post expiry of the PPAs, which is not permissible under law, in view of the fact that the previous tariff orders have already attained finality.
- 10.4) That the respondent, distribution licensee, has decided to proceed to purchase wind energy from the wind power projects commissioned in FY 2013-14 at a tariff determined by the State Commission vide its tariff order dated 22.03.2013 in Case No.6 of 2013 by executing long term Energy Purchase Agreements (**EPA**) with the wind generators. The said decision was taken in relation to the compliance of renewable purchase obligation target.
- 10.5) That in FY 2013-14, around 400 MW capacity wind power project holders were intending to enter into long term (13 years) EPA with distribution licensee at a tariff determined by the State Commission's tariff order dated 22.03.2013.
- 10.6) That in the common interest of consumers in the State of Maharashtra, the distribution licensee had added the afore stated contentious/ impugned clauses in the EPA. The distribution licensee has informed the wind generators about the contentious clauses to be inserted in the EPAs and accordingly, the distribution licensee has started executing PPAs with the wind power projects which were commissioned in FY 2013-14 and which were intending to exercise the option of sale to distribution licensee. A number of wind generators have been approaching the distribution licensee for signing of EPA.
- 10.7) That the appellant/association of the appellant has not disclosed as to who are its Members or the PPAs in respect of which the relief is being sought. Further, the matter being in contractual realm the real point is

whether entities, who have voluntarily agreed to enter into the PPAs, can, without disclosing their interest seek relief such as the one prayed for? It is necessary that the party to the PPA seeks relief after disclosing of facts relating to contract/agreement/PPA. In the instant appeal, the appellant/association has moved the matter without disclosing the actual agreements, neither disclosing entities who desire modification of their EPAs. Thus, the appeal militates against the objective of transparency and as a case of third party which is not privy to a contract seeking modification of undisclosed PPAs with undisclosed wind energy generators.

10.8) That the respondent, distribution licensee, executed 153 EPAs with wind energy generators translating into 1014.3 MW. Out of these 153 wind energy generators, only four signed the EPAs stating that the same was signed without prejudice. Even these four, by their conduct, had accepted the terms of agreements and fed electricity in the grid. The conduct in individual cases without prejudice can be examined if any such wind energy generators seek any relief. In respect of the wind energy generators, who did not protest in respect of the impugned/contentious clauses in the agreement, the respondent, distribution licensee, had made it clear that it would insist on the same. Some wind energy generators, however, have entered into contract/agreement and have been functioning under the contract, continued to feed electric energy into the grid and thereby agreed to the terms of the agreements. The back door method of wriggling out of contract ought not to be permitted. Any agreement or contract or PPA is not enforceable and is liable to be modified and set aside at the instance of a person who is not bound by it. Admittedly, the appellant is not bound by any of the EPAs. The role of the appellant to present its case on behalf of the Members cannot be widened and generalized to bring within its ambit PPAs completely disregarding the privity of the contract.

10.9) That regarding payment for the period prior to execution of the PPA, particularly, 1st April, 2013 to 30th September, 2013, in accordance with the order dated 07.04.2014 in Case No. 92 of 2013, the wind power projects whose PPA's have not expired are free to give an option to extend PPA to project life, which option was given to both the parties with complete parity. In terms of extension, the respondent, distribution licensee has every right to comply with its RPO by exercising its varied options as available to it under law. The appellant cannot contend that only purchase of wind energy is necessary. During the pendency of the impugned petition PPAs were not executed initially as MSEDCL desires adjudication of various issues. During this time, the wind energy generators had completed formalities to deal with energy generated by them elsewhere. However, during the pendency of the impugned Petition, being Petition No.93 of 2013, the MSEDCL entered into agreement and **even agreed to purchase the wind energy injected into the grid prior to signing of PPA.** This has been done without payment of interest. The appellant association is precluded from contending that interest is payable in respect of payment towards energy fed into the grid prior to execution of PPA.

11) **Our consideration and conclusion:**

We have cited, in detail the facts of the matter, nature of the dispute, contention of the rival parties and the findings recorded by the State Commission in the Impugned Order, in the upper part of this judgment, which we do not want to reiterate here again. Now we directly proceed towards our discussion and conclusion on the issues.

11.1) As narrated above, the appellant/petitioner, namely Indian Wind Power Association, which is a non-profit making organization, set up in the year 1996 and is an association of wind power developers/generators, filed

the Impugned Petition, being No.93 of 2013 before the State Commission on 30th July, 2013, for seeking directions against the respondent No.2, MSEDCL, a distribution licensee, to enter into PPA at a tariff approved for FY 2013-14 as per tariff order, dated 22.03.2013 in case No.6 of 2013 and Commercial Circular No.196 dated 29.04.2013, issued by the distribution licensee and Tariff Regulations of the State Commission. The said Impugned Petition has been disposed of/dismissed by the State Commission by the Impugned Order dated 20th June, 2014 on the following two grounds:

- (i) That the Impugned Petition has become infructuous and
- (ii) Since the distribution licensee has already started signing EPA with Wind Power Producers in the State of Maharashtra and hence, the question of initiating proceedings against officers of the distribution licensee under Section 129, 142 and 149 of the Electricity Act, 2003 does not arise.

11.2) Thus the learned State Commission, by the Impugned Order, simply dismissed the Impugned Petition of the appellant/association on the ground of the Petition having been infructuous just because that many wind power producers/developers had already entered into EPA with the distribution licensee and signed the same inclusive of the impugned clauses and hence, no proceedings can be initiated under the Electricity Act, 2003, against the officers of the distribution licensee.

11.3) Now we are to consider whether such an important Petition where the appellant/association, which is a non-profit making organization, had sought direction of the State Commission asking distribution licensee to enter into PPA, at the tariff approved for the FY 2013-14, as per the then existing tariff order dated 22.03.2013, in Case No.6 of 2013 and the Commercial letter No.196 dated 29.04.2013 that had been issued by the

distribution licensee for the purpose of making compliance of the tariff order dated 22.03.2013 of the State Commission could be dismissed when the distribution licensee, having accepted the tariff order of the State Commission and having issued Commercial Circular for complete and full compliance of the tariff order, has added or modified some impugned clauses which we have mentioned in Paragraph 6.6, above. Such a Petition should have been decided by the State Commission on the merits rather than dismissing the same just on the technical grounds or formal grounds like infructuousness or since most of the wind energy generators had already entered into PPA with the inclusion of the Impugned clauses to the said agreement and other wind energy generators have been ready to enter into the said PPA with the inclusion of Impugned clauses to the said agreement.

- 11.4) We may further mention here that the learned State Commission, while Impugned Petition was still pending before the State Commission, had pronounced an order dated 07.04.2014 in another Petition No.92 of 2012 which was in respect of wind policy matter holding that the wind power projects, whose PPAs have not expired, may be given an option to extend PPA to project life and such option for extension of the life of PPA was made available to both the parties without there being any compulsion or undue influence. The material on record further reflects that the distribution licensee instead of complying with the State Commission's tariff order dated 22.03.2013 in Case No.6 of 2013 and having issued Commercial Circular No.196 for complete and effective compliance of tariff order dated 22.03.2013 did not implement the said tariff order dated 22.03.2013 in letter and spirit. That's why the learned State Commission, vide daily order dated 01.10.2013, directed respondent No.2, a distribution licensee, to comply with the tariff order dated 22.03.2013 and submit its action on the same. The distribution licensee/respondent No.2, in response thereof, agreed to enter into long

term PPA for FY 2013-14, as per tariff rates of the order dated 22.03.2013, but at the same time with some ulterior motive or with malafide intention or being in a state of exercising undue influence or compulsion deviated from terms and conditions of the PPA already approved by the State Commission and the distribution licensee, *suo motu*, without approval or sanction of the State Commission added the following contentious/Impugned clauses to the approved PPA:

d. Proviso added to Section 11.04: payments

Provided that the payments to the seller for the period from the date of commissioning of the project up-to 30.09.2013 will not be governed by clause / Section No. 11.04 of EPA. The payment for this period will be effected by MSEDCL on best effort basis without interest. The terms and conditions of the Section 11.04: Payments, shall be applicable for the energy injected into grid” w.e.f. 01.10.2013.

e. Section 4.03 : First Right of Refusal Post Expiring EPA

After completion of EPA tenure of 13 years from the date of commissioning of the wind power project, MSEDCL, shall reserve First Right of Refusal to procure power at the same rate (MERC determined tariff as may be applicable for the said wind power project as per MERCRE tariff order dated 22.03.2013 in Case No. 6 of 2013) or the rate as may be decided by the MERC whichever is lower till the end of life of wind power project (i.e. 20/25 years as the case may be).

f. (Added as Section 4.04 & 11:07)

*It is mutually agreed that the above said terms and conditions shall form integral part of this Energy Purchase Agreement.”
 (“Impugned Clauses”)*

11.5) In addition to the above, it is pertinent to mention here that the appellant/petitioner filed one more Petition, being No.130 of 2014 before the State Commission, seeking clarification of the Impugned Order dated 20th June, 2014 in Petition No. 93 of 2013, which had been dismissed by the State Commission vide order dated 19.12.2014, observing that if

wind power developers and distribution licensee have already started signing PPA with mutually agreed terms and conditions, the Commission does not find any merit in further directing the distribution licensee to sign the PPA with wind developers and further observed that since the State Commission in the Impugned Order dated 20th June, 2014 has not directed either party to enter into the EPA with or without modified clauses, option has been left with either of the parties to enter into the PPA.

- 11.6) As stated above, the appellant/petitioner filed the Impugned Petition, being No.93 of 2013, before the State Commission to direct the distribution licensee to enter into PPA with wind project developers w.e.f. 01.04.2013 in accordance with the tariff order dated 22.03.2013, in Case No.6 of 2013, read with State Renewable Energy Tariff Regulations 2010 and Commercial Circular No.196 issued by the distribution licensee and further to direct the distribution licensee to enter into PPA at the said tariff decided by the State Commission throughout the control period and also to initiate proceedings against the officers of the distribution licensee under Section 129, 142 and 149 of the Electricity Act, 2003 for willful disobedience of the orders passed by the State Commission. We have, in paragraph 9.5, narrated the prayers made by the appellant/petitioner in the Impugned Petition before the State Commission. The main contention of the appellant, *inter alia*, is that the distribution licensee in spite of having agreed to enter into long term PPA for the FY 2013-14 at the rates of the tariff order dated 22.03.2013, in Case No.6 of 2013 but with malafide intention and being in a position of causing undue influence over wind energy developers has deviated from the terms and conditions of the PPA that had already been approved by the State Commission and *suo motu* without approval or sanction from the State Commission inserted the above said contentious clauses/ impugned clauses.

- 11.7) Another contention of the appellant is that due to certain financial hardships faced by the wind energy generators who would have availed the financial assets for setting up wind power plants and in the absence of PPA and any payments being received for a long period of more than 12 months and fearing their accounts with the bank would turn out to be a non-performing asset and possibility of the lenders even initiating actions for attachment of the assets jeopardizing the entire business or the group business of such wind energy generators, some of the wind energy generators/developers started signing PPA with inclusion of afore mentioned contentious clauses. Not only this, the distribution licensee insisted on such wind energy generators to give an undertaking that these inclusions are acceptable to them. Some of the wind energy generators gave in or succumbed to such coercion, duress and undue influence of the distribution licensee. As the FY in respect of the PPA contemplated had elapsed, some of the Members of the appellant/association have also signed or agreed to sign a PPA under protest.
- 11.8) One more contention of the appellant is that the stand of the respondent, No.2 for inserting the contentious clauses to the PPA/EPA was that all the prevalent clauses of the PPA will be given effect prospectively and after expiry of PPA, the wind energy generators shall have to sell the wind energy to the distribution licensee at the same tariff as determined by tariff order dated 22.03.2013 or at the tariff to be determined by the State Commission, whichever is lower, for the balance life of the project and such purchase shall form the part of Renewable Purchase Obligation (**RPO**). With this view of the distribution licensee, the respondent distribution licensee, has incorporated a clause in the PPA that post expiry of the PPA, first right of refusal would be with the distribution licensee as the wind generators have recovered substantial profit and

assets created by these generators logically shall become the property of the State since the consumers of the said utility have consumed the expensive wind power as the State Government had provided various benefits to wind energy generators. Further, since PPA was pending execution, as per the distribution licensee, there could not be any question of any payment of interest and forced the wind power developers to accept the 2nd Impugned clause of the payment for April 2013 to September, 2013, (which is a high wind period and value of generation could be maximum for the year) would be paid on Best Effort Basis without interest.

11.9) The reply to the contention of the appellant on behalf of the respondent, distribution licensee, is that the respondent/distribution licensee has decided to proceed to purchase wind energy from wind power projects commissioned in the year 2013-14 at a tariff determined by State Commission vide its tariff order dated 22.03.2013 in Case No.6 of 2013, by executing long term EPA with the wind generators and the said decision was taken by the distribution licensee in relation to the compliance of RPO target in FY 2013-14 when many wind power holders were intending to enter into PPA/EPA (for 30 years) when distribution licensee had a tariff determined by State Commission's tariff order dated 22.03.2013. Further, the emphasis of the distribution licensee is that in the common interest of the consumers in the State of Maharashtra, the distribution licensee had added the above stated impugned clauses in the EPA and accordingly, the distribution licensee had started executing PPA with wind power projects which were commissioned in FY 2013-14 and which were intending to exercise an option of sale to distribution licensee.

11.10) After careful consideration of the rival contentions of the appellant/association and the distribution licensee, we do not find any

merit or substance in the contentions of the distribution licensee because the contentions of the appellant/association are meritorious and are liable to be accepted.

11.11) We are further unable to accept the contention of the distribution licensee that the appellant, which is an association, has not disclosed about its Members of the PPAs in respect of which the relief is sought. The appellant being an association of wind energy generators is fully competent and authorized to challenge the impugned contentious clauses in the already approved PPA from the State Commission and particularly the contentious clauses having been inserted in the PPA without the consent or the approval of the State Commission. The association has a legal right to challenge the inserted impugned clauses, questioning the nature and principle on the basis of which the said clauses have been inserted in the PPA, which had already been approved by the State Commission and the said insertion has taken place without the approval of the State Commission. As emerges from the various orders of the State Commission the option was available to both the parties and it cannot be made unilateral. The distribution licensee cannot be allowed to insert contentious clauses to the PPA which had already been approved by the State Commission and that too without the consent or approval of the State Commission. No doubt the MSEDCL which is the government distribution licensee in the State of Maharashtra, has always been in a dominant position to exercise undue exercise over the wind energy generators impressing upon them to sign the EPA inclusive of the contentious clauses which clauses cannot, by a stretch of imagination, be said to be just, legal and equitable one. The record further depicts that most of the wind energy generators have been compelled or forced by exercising undue influence over them to enter into and sign a PPA with the distribution licensee at the terms and conditions of distribution licensee irrespective of the tariff order dated 22.03.2013 in

Case No.6 of 2013. Some generators entered into the said EPA/PPA or filed undertakings under protest because once they start generation, they have to supply the power and the same cannot be stored.

11.12) Now we proceed to consider the nature of the Impugned clauses which have been inserted by respondent No.2, MSEDCL to the PPA already approved by the State Commission. Clauses (d), (e) & (f) have been inserted by the distribution licensee. Clause (d) relates to proviso added to Section 11.04, dealing with payments. It says that the payments to the seller for the period from the date of commissioning of the project after 30th September, 2013 will not be governed by clause/Section No.11.04 of the EPA and payment for this period will be effected by MSEDCL on Best Effort Basis without interest and further payments shall be applicable for the energy injected into the grid w.e.f. 01.10.2013. Thus this newly inserted clause provides that payment to the seller namely, wind energy generators, for the period from commissioning date of the project up to 30.09.2013 will not be governed by Section 11.04 of the EPA and the payment for the said period will be made by distribution licensee on Best Effort Basis and that too without interest. It means that the distribution licensee shall make Best Efforts to make the payment to the generators without any interest.

11.13) Second Impugned clause (e) inserted deals with Section 4.03- first right of refusal post expiry EPA. This clause says that after completion of EPA tenure of 13 years from the date of commissioning of the wind power project, the licensee shall reserve first right of refusal to procure power at the same rate as fixed by tariff order dated 22.03.2013 in Cse No.6/2013 or the rate as may be determined by the State Commission, whichever is lower, till the end of life of wind power project, (i.e. 20/25 years as the case may be). By inserting this clause the purpose and intention of the distribution licensee is that after completion of EPA tenure of 13 years

from the date of commissioning of the project, the distribution licensee shall have first right of refusal to procure power at the same rate determined by order dated 22.03.2013 of the State Commission or the rate as may be decided by the State Commission, whichever is lower, till the life of the wind power project. Just first right of refusal to procure power has been conferred on the distribution licensee unilaterally and the wind energy generators will have no say in that matter. The wind energy generators will be at the mercy of the distribution licensee so far as sale of power by generators to distribution licensee is concerned. Further, the licensee has reserved to itself the right to purchase power at the tariff which is lower and that too till the end of the life of the wind power project. It means, that distribution licensee can refuse to purchase power from the wind energy project insisting on a lower tariff till the end of life of the project.

11.14) The more interesting clause inserted by the distribution licensee to the EPA or PAP is addition of clause (f), which is added as Section 4.04 and 11.07, which says that it is mutually agreed that above said terms and conditions shall form integral part of this EPA. Thus the distribution licensee has conferred upon itself all rights, depriving the wind power generators from everything, by stipulating that the parties have mutually agreed that the newly added terms and conditions to the agreement shall form integral part of the EPA.

11.15) Since, after careful scrutiny and analysis of material on record, we find that all the inserted/contentious/impugned clauses have been inserted by respondent No.2, MSEDCL, to the already approved PPA/EPA by distribution licensee unilaterally and in utter disregard to the law, particularly, in violation of the various provisions of the Indian Contract Act, 1872. Insertion of these clauses has given absolute and

uncontrollable power to the distribution licensee to deal with the situation prescribed in the inserted clauses/ contentious clauses.

- 11.16) A perusal of the nature and wordings of the impugned clauses make it clear that the said energy agreement or agreement suffers from the vice of, coercion as well as undue influence. Section 14 of the Indian Contract Act, 1876 defines '**free consent**' as the consent *to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake*. Further, consent is said to be so caused '*when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake*'. Section 15 of the Contract Act defines '**coercion**' as *the committing or threatening to commit, any act forbidden, by the Indian Penal Code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement*.
- 11.17) Further, Section 16 of the Indian Contract Act, 1872 defines '*undue influence*' saying that a contract is said to be induced by '*undue influence*' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
- 11.18) Now after analysis of the whole material and legal provisions, we hold that the contentious clauses inserted by the distribution licensee to the EPA or PPA unilaterally and without the consent or approval of the State Commission are against the provisions of Section 15 & 16 of the Contract Act. Since the distribution licensee was or is still in a position to dominate the will of the wind energy generators the said Impugned clauses are a result of exercise of undue influence or coercion by distribution licensee upon the wind energy generators. Most of the wind

energy generators have been compelled or coerced due to undue influence to enter into PPA or EPA and sign the same without being in the position of exercising free consent to the same. Some have done the same under protest or some have been constrained to do that act because otherwise they were bound to suffer on financial as well as viable aspect of their business of wind power generation.

11.19) Thus we find that all the findings recorded in the Impugned Order, being perverse and illegal, are liable to be set aside as they are not based on correct, proper and legal appreciation of the material available on record. Consequently, the Impugned Order is liable to be set aside or quashed. The approach of the State Commission is quite defective and illegal because such a Petition cannot be dismissed or disposed of just on the ground of it having been infructuous and also that most of the wind power generators have entered into the PPA or EPA with inclusion of the impugned/contentious clauses and that too without the approval or sanction of the State Commission. Such kind of unilateral inclusion of the contentious clause to the already approved PPA from the State Commission cannot be allowed unilaterally and against the provisions of law. Further, any distribution licensee, like MSEDCL, cannot be allowed for unilateral insertion of the Impugned clauses to the already approved PPA or EPA just on the ground that wind energy generators had been promoted by granting economical benefits at the initial stage and the consumers of the State would be benefitted by purchasing cheaper power, completely disregarding the objective of the Electricity Act, 2003 where there is a special provision like Section 86(1)(e) for promoting the wind power generation. After all a balance is required to be maintained in such kind of matters like determination of tariff because at one hand the generators should not be allowed to suffer and on the other hand consumers should get the cheaper power as the circumstances of the matter may warrant at the relevant stage. If the intention of the

distribution licensee for inclusion of contentious clauses to the EPA or PPA was towards RPO target, we may make it clear here that there are separate Regulations of State Commission to deal with the RPO targets.

11.20 The Impugned Petition, being Petition No. 93 of 2013 filed by the appellant/petitioner before the State Commission seeking direction to respondent No.2, distribution licensee to enter into PPA with wind power developers at a rate as per tariff order dated 22.03.2013 in Case No.6 of 2013, read with Commercial Circular No.196 dated 29.04.2013 from 01st April, 2013 is liable to be allowed. All other prayers made in the Impugned Petition are liable to be disallowed. The State Commission, which is respondent No.1, should be directed to ensure positive compliance of our directions in this judgment within three months from today. We find it abundantly clear that since the appellant Indian Wind Power Association is an association of wind power developers/generators, this judgment should equally apply to all the wind power generators or wind power projects in the State irrespective of the fact of their having entered into PPA or EPA or having signed the same with the respondent No.2, with the inclusion of contentious clauses to the said agreements for FY 2013-14 under coercion or undue influence or protest.

ORDER

- 12) This appeal, being Appeal No.210 of 2014, is hereby allowed in favor of the appellant/petitioner and against the respondents and the Impugned Order dated 20.06.2014, in Case/Petition No.93 of 2013, filed by the appellant/petitioner, namely Indian Wind Power Association, is hereby set aside/quashed.

- 13) The Impugned Petition No.93 of 2013, filed by the appellant/petitioner, before the State Commission seeking direction to respondent No.2, namely MSEDCL, a distribution licensee, to enter into PPA with wind

power developers at a rate as per tariff order dated 22.03.2013 in Case No.6 of 2013, read with Commercial Circular No.196, dated 29.04.2013, issued by the distribution licensee, from 01st April, 2013 is hereby allowed. All other prayers made in the Impugned Petition are disallowed. The State Commission, which is respondent No.1, is hereby directed to ensure positive compliance of our directions given in this judgment within three months from today. We make it abundantly clear that since the appellant, which is Indian Wind Power Association, is an Association of wind power developers, this judgment shall apply equally to all the wind power generators or wind power projects in the State irrespective of the fact of their having entered into PPA or EPA with respondent No.2, distribution licensee, with the inclusion of contentious/impugned clauses to the said agreement for FY 2013-14 under coercion, undue influence or protest. Thus this judgment shall apply to all the wind energy generators or wind power projects of the State, irrespective of their not having filed any appeal before this Appellate Tribunal, if they are squarely covered by this judgment.

No order as to costs.

Pronounced in the open court on this **26th day of February, 2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~