

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 15 of 2013

Dated: 17th April, 2013

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. V.J. Talwar, Technical Member

In the matter of:

Simran Wind Projects Private Limited
2F & 3F, North Block
Park Plaza, 71, Park Street
Kolkata – 700 016

...Appellant(s)

Versus

- 1. Tamil Nadu Electricity Regulatory Commission**
No. 19 A, Rukmini Lakshmipathy Salai
Egmore, Chennai – 600 008

- 2. Tamil Nadu Generation and Distribution Corporation Ltd.**
No.144, Anna Salai
Chennai – 600 002

...Respondent(s)

Counsel for Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s): Mr. S. Vallinayagam (R-2)

JUDGMENT

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

1. Simran Wind Projects Private Limited is the Appellant herein.
2. The Tamil Nadu Electricity Regulatory Commission (State Commission) is the 1st Respondent. Tamil Nadu Generation and Distribution Corporation Ltd. is the 2nd Respondent.
3. The Appellant has filed this Appeal as against the impugned order dated 03.09.2012 passed by the State Commission wherein, the State Commission had fixed the pooled power purchase cost for the purchase of electricity by Respondent No.2 i.e. GENCO from the Appellant.

4. This Appeal does not challenge the fixation of cost but confines itself only with regard to the date of its applicability.
5. The short facts are as follows:
 - a) The Appellant is a company engaged in the business of establishing, operating and maintaining wind power generating stations and supplying electricity to distribution licensees.
 - b) The Appellant entered into Power Purchase Agreement with the Tamil Nadu Generation and Distribution Corporation Ltd. (R-2) being the distribution licensee for the supply of electricity. The State Commission (R-1) framed Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation), Regulation, 2010 in line with the REC Regulations of the Central Commission. Under these

Regulations, the term 'Pooled Power Purchase Cost' has been defined. In terms of above, the distribution licensee procures electricity at the pooled power purchase cost which is much lower than marginal cost of power at market price.

c) The Appellant has also agreed to supply electricity at the pooled power purchase cost to the distribution licensee. In view of its supplying of electricity at substantial lower power purchase cost, the Appellant is entitled to Renewable Energy Certificate under REC Regulations of the Central Commission.

d) The State Commission had earlier passed an order dated 28.12.2010 computing the pooled power purchase cost which was to be applicable for the supply of its electricity by the Appellant to qualify under the

REC scheme. The above order was to be applicable till 31.3.2011 or till such time the State Commission passes a fresh order.

e) After passing of the said order dated 28.12.2010, the State Commission did not compute any pooled power purchase cost applicable for the year 2011-12. The distribution licensee (R-2), raised the plea that the pooled power purchase cost as existing at the time of execution of the Power Purchase Agreement would remain constant for the entire period of 20 years as referred to in the Power Purchase Agreement.

f) In view of the above stand taken by the Respondent, the Appellant filed a petition in petition No. 16 of 2011 before the State Commission claiming that the pooled power purchase cost was not to be fixed for

the entire period of contract under the PPA but shall be fixed on yearly basis.

g) Accordingly, the State Commission, after hearing the parties, by the order dated 22.03.2012 disposed of the petition holding that the pooled power purchase cost for the purpose of REC scheme shall be on yearly basis and not on the period of contract.

h) However, there was no order of State Commission passed after 28.12.2010 to compute the pooled power purchase cost. Hence, the Appellant filed a petition before the State Commission in petition No. 28 of 2012 seeking orders of the State Commission for the computation of the pooled power purchase cost for the FY 2011-12 and FY 2012-13.

i) During the pendency of this petition, the State Commission passed the separate order dated 03.09.3012 which is the impugned order computing the pooled power purchase cost applicable for the year 2012-13 under the REC mechanism as Rs.2.54 per unit. In this order, the State Commission held that this order shall come into effect only from the date of the order namely 03.09.3012.

j) Challenging the date of applicability, as fixed by the State Commission, the Appellant has filed this Appeal claiming that this fixation of the pooled power purchase cost for the FY 2012-13 should have been on yearly basis and therefore it should be made effective from 01.04.2012 till 31.03.2013 and not from the date of the order i.e. 3.9.2012.

6. The Learned Counsel for the Appellant while assailing the impugned order has made the following submissions:

“The State Commission has gone wrong in not giving effect to the order for the financial year 2012-13 from 01.04.2012 but restricting its applicability only from 3.9.2012, the date of the order. There is no justification for not providing the said pooled power purchase cost for not fixing the pooled power purchase cost on yearly basis covered under REC mechanism. Even though the State Commission had specifically held in the order dated 22.03.2012 that the pooled power purchase cost shall be the rate as specified by the Commission on yearly basis, the State Commission fixed the pooled power purchase cost by giving effect only from 03.09.2012 instead of fixing the cost on yearly basis i.e. from 01.04.2012”.

7. The Learned Counsel for Respondent no.2 in justification of impugned order submitted that the amendment of the Regulation 6 and the Regulations, 2008 provided that the tariff as determined by the Commission shall remain in force for such period as may be specified by the Commission in the Tariff Order and that therefore, the State Commission correctly fixed the tariff in the impugned order from 03.09.2012 which would remain in force even after 31.03.2011 if no new rate was notified by 31.03.2011.
8. We have heard the Learned Counsel for the parties.
9. The only question raised in this Appeal for our consideration is this: “Whether the average pooled power purchase cost calculated by the State Commission in the present case is to be applied on yearly basis ?”.

10. At the outset it shall be stated that the reliance by the Learned Counsel for the Respondent no.2 on the amendment of Regulation 6 of the Renewable Energy Purchase Obligations is misplaced. The amendment to Regulation 6 deals with the tariff to be determined by the State Commission for the purchase of power from renewable sources, which is preferential tariff determined by the State Commission in terms of Section 86(1)(e) of the Electricity Act, 2003. As such, this amendment of Regulation 6 would not apply to the present case.
11. In the present case, the State Commission has not fixed the tariff from the Appellant's Generation Stations as per the said Regulation. On the other hand, the State Commission has fixed the average pooled power purchase cost based on the total power purchases made by the distribution licensees

in the previous year and as such, there is no separate determination of the tariff. It is merely a computation.

12. In other words, the computation of the average pooled power purchase cost has no relevance whatsoever to the preferential Tariff Order passed by the State Commission for renewable energy sources.
13. In this case, as indicated above, the issue to be considered as to whether the State Commission is justified to restrict the applicability of the pooled power purchase cost only from the date of the order namely 03.09.2012 in respect of the financial year 2012-13 instead of giving effect from the commencement of the Financial Year.
14. In this context, it would be worthwhile to refer to the earlier order passed by the Commission on 28.12.2010. In this order, the Commission held the term “Financial Year” would

mean from the 1st April of that year up to 31st March of the next year. The following is the observation:

“This also clearly indicates that the pooled cost of power purchase of Rs.2.37 per Unit for the year 2009-10 would apply for the financial year 2010-11 i.e. for the period 1-4-2010 to 31-3-2011. The enabling provision of continuing the same rate beyond 31-3-2011, if no new rate is notified by that date is only to enable the transactions to go on and not to create any vacuum in the system.”

15. The above observation would make it clear that when pooled power purchase cost fixed for the particular Financial Year that would take effect only from the 1st April of that particular year up to 31st March of next year.
16. The term “Pooled Cost of power purchase” has been defined in TNERC’s Regulation 2(1)(h) of Renewable Purchase Obligation Regulations, 2010 which is as follows:

“weighted average pooled price at which the distribution licensee has purchased electricity including

the cost of self generation in the previous year from all the long term suppliers...”

17. The State Commission, in para 4 of the impugned order, has stated as under:

“4 In accordance to the above, based on the records furnished by the Tamil Nadu Generation and Distribution Corporation (TANGEDCO), the Commission hereby specifies the pooled cost of power purchase by the TANGEDCO for the year 2012-13 as Rs 2.54 per unit...”

18. The State Commission has calculated the pooled power purchase cost of Respondent-2 based on the power purchases for the previous financial year 2011-12 i.e. the period between 1.4.2011 to 31.3.2012.
19. The State Commission has construed the term ‘year’ used in the Regulation 2(1)(h) as the “Financial year”. Hence, the term ‘year 2012-13’ used in the para 4 of the impugned order has to carry the same meaning i.e. the financial year 2012-13. Accordingly, the weighted average pooled price at which the TANGEDCO(R-2) had purchased electricity during the previous financial year 2011-12 (1.4.2011 to 31.3.2012) from all the long term suppliers would be the pooled cost of power

purchase for the financial year 2012-13 (1.4.2012 to 31.3.2013).

20. As correctly pointed out by the Learned Counsel for the Appellant, in the order passed by the State Commission on 22.03.2012 in the petition no. 16 of 2011 filed by the Appellant for clarification, the State Commission had specifically held that the pooled power purchase cost for the purpose of REC scheme cannot be fixed for the period of contract but shall be fixed on the yearly basis i.e. applicable from time to time. Therefore, the impugned order giving effect from the date of the order 03.09.2012 is contrary to the earlier order passed by the Commission giving effect on yearly basis.

21. **To sum up:**

The term “Financial Year” as well as the term ‘on yearly basis’ would clearly indicate that the rate of fixing the rate as specified by the Commission would take effect from the commencement of the Financial Year i.e. 01.04.2012 not on the date on which the impugned order is passed.

22. In view of the above, the impugned order dated 03.09.2012 is set aside to the extent as indicated above. Consequently, we hold that the impugned order passed on 03.09.2012 would take effect from 01.04.2012 till the new rate is fixed in the next year.
23. The Appeal is allowed. There is no order as to cost.
17. Pronounced in the open court on 17th day of April, 2013.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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