IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-02-2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP NO.20336 OF 2015
AND
MP NOS.1 TO 3 OF 2015

Tamil Nadu Spinning Mills Association,
No.2, Karur Road, Near Beschi College,
Modern Nagar,
Dindigul - 624 001 Represented by its
Chief Advisor Dr.K.Venkatachalam

... Petitioner

vs.

1. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai,
Chennai - 600 002 Represented by its
Chairman.

2. Tamil Nadu Transmission Corporation Ltd.,
(TANGEDCO),
144, Anna Salai,
Chennai - 600 002 Represented by its
Chairman.

3. State Load Despatch Center,
144, Anna Salai,
Chennai - 600 002 Represented by its
Director Operations.

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

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent-TANGEDCO, second respondent-TANGEDCO and the third respondent-SLDC not to back out the

Windmills in the guise of grid stability and further direct the respondents 1 to 3 to implement the order of the Senior Member of the fourth respondent-TNERC as issued in MP No.21 of 2014 on 01.07.2015.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents -1 to 3 : Mr.L.Jai Venkatesh, Standing Counsel for TANGEDCO.

For Respondent-4 : No Appearance

O R D E R

The learned counsel for the petitioner submitted the copy of the order passed by the Appellate Tribunal for Electricity at New Delhi in Appal No.197 of 2019 dated 02.08.2021, wherein the issues raised in the present writ petition were considered and the same reads as under:-

> "111. The Appellant, NSEFI, is mainly aggrieved with the decision of the Respondent Commission in the impugned order dated 25.03.2019 to disallow deemed generation charges for the capacity which could not be generated and supplied due to backing down instructions issued by Respondent No 3 (TNSLDC). The Appellant Association has alleged that its members were directed to back down generation of their solar plants by way of arbitrary, unjustified and unlawful verbal and email instructions issued by the State Load Despatch Centre. It is the contention of the Appellant that the backed down energy must be considered as deemed generation and ought to have been compensated with deemed generation charges as per the tariff applicable under PPA by the Respondent Commission. In this regard, the Respondent Commission, in the impugned order, has decided as under:-
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> "10.17. While perusing the rejoinder filed by the petitioner, it is found a fresh prayer seeking deemed generation charges to the solar generating units for the loss of power generation units due to backing down instructions issued by the SLDC. Inasmuch as the Commission considers that (a) in the

present circumstances it is unavoidable that the generation from the solar generators need to be curtailed albeit to a small extent if the grid conditions so warrant, (b) we have given direction to the SLDC not to resort backing down instructions without recording the proper reason which are liable for scrutiny at any point of time and (c) that there is no provision in the agreement signed with the Utility for payment of deemed generation charges, we find it not possible to accede to the prayer of the petitioner.”

112. The Appellant has submitted that the Respondent Commission has erred in considering the claim of deemed generation charges as fresh prayer and disallowing the same on the aforementioned grounds. It is the contention of the Appellant that the decision of the Respondent Commission to reject the claim of deemed generation charges is contrary to Section 61 (b), (c), (h) and Section 86 (e) of the Act; provisions of Tariff Policy, National Electricity policy and the Tamil Nadu Solar Policy 2012; IEGC, Tamil Nadu Grid Code and the Energy Purchase Agreements; and principle of promissory estoppel. The Appellant has also contended that the decision of the Commission is violative of Article 14 of the Constitution for its own Tariff Regulations [TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005] has provision to grant deemed generation payments to hydro power plants in case of reduced generation due to reasons beyond the control of the generating companies.

113. Per Contra, the Respondents have submitted that as per Section 32 and Section 33 of the Act; Clause 2.7 of IEGC; Clause 4.2 (e) and 8.4 (iii) and (v) of Tamil Nadu Electricity Grid Code, the SLDC is responsible for maintaining continuous power supply to common public in the State by secured and economic operation of grid and, hence, the SLDC is in the position to restrict any surplus power injected into the grid on real time operation for reliable grid operation. It has been submitted that Regulation 5.2 (u) of IEGC, 2010

stipulates back down instructions from SLDC to solar/wind generators whenever grid conditions warrant. Further, Clause 3(a) and 3(I) of the Energy Purchase Agreement provide that the injection/dispatch of solar power is subject to maintaining the safety and security of grid only. Accordingly, in order to maintain the grid discipline and grid security, after taking all possible steps to reduce generation of conventional power and surrendering of CGS power etc, the infirm solar and wind generation are curtailed. It has been stated that the last resort of curtailment is only because of the must run status of these infirm generations. The Respondents have further submitted that in addition to the compensation to CGS for reserve shutdown, the Discom has to pay fixed charges to the conventional generators for the energy not purchased by the discom, penalty for under drawal from conventional generators under Deviation Settlement Mechanism (DSM) in addition to the tariff paid to wind and solar generators. The Respondents have submitted that if above financial aspects are taken together, the cost per unit of wind and solar energy becomes prohibitively high.

114. The Respondents have also contended that there was no concrete proof brought on record by the Appellant before the Regulatory Commission to substantiate its allegation that the back down instructions were issued arbitrarily. It has also been argued by the Respondents that there is no finding in the impugned order by the Commission to show that the back down instructions are unlawful. As regards treatment of solar energy with hydro energy as per Tariff Regulations, 2005, the Respondents have submitted that this specific submission was raised by the Appellant Association before the Commission during the determination of tariff for solar generators in tariff orders dated 28.03.2017 and 29.03.2019 and was not accepted by the Commission on both the occasions. With regards to provisions of the Act and Policies relied on by the Appellants, the Respondents have contended that these provisions are policy directions and guidelines for encouraging the capacity

addition of the non-conventional energy sources and the Appellant cannot seek omnibus relief unmindful of grid security.

Independent enquiry by POSOCO

115. During the hearing held on 26.08.2020, learned senior counsel Mr. Sanjay Sen, appearing for the Appellant and Mr. Jayanth Muthraj, learned senior counsel appearing for Respondent Nos.2 to 4 referred to several charts, tables prepared by them for placing on record the data and details, as directed by this Tribunal on earlier dates of hearing. After hearing both the parties, this Tribunal observed that it cannot make rowing enquiry into factual data, therefore, such enquiry has to be done by a third party i.e. POSOCO. Accordingly, the Tribunal directed as under:-

"We direct POSOCO to make detailed verification of the data after considering the contentions raised by the parties and submit report to the Tribunal within four weeks and indicate whether there was intentional curtailment of scheduling of power by the Respondents/SLDC or whether it was on account of grid safety measure taken by SLDC as contended by the Respondents. We also direct a clear statement "Was there any fair and justifiable curtailment of power from all generators, both renewable and non-renewable, the actual generation and injection of energy"?

Both the parties shall cooperate and assist POSOCO to comply with our direction in conducting enquiry. In other words, whatever data and details POSOCO requires, parties shall furnish the same to POSOCO."

116. In compliance with the above direction, POSOCO, acting as third party, conducted enquiry, validated data and submitted its findings in report "Report on Renewable Energy Curtailment in Tamil Nadu (for the period 01.03.2017 to 30.06.2017)". The Summary of Findings of POSOCO report is extracted below:-

"6. Summary of Findings

Description of the Hon'ble APTEL Direction	Findings Summary
1. Detailed verification of the data after considering the contentions raised by the parties	. Out of the 56 generators, 16 generators with total installed capacity of 1052 MW submitted the data. Data of 10 generators were complete and data of 6 generators was partial. . Period and percentage of curtailment actually implemented by the developer and instruction given by TN was found to be different with varying times of delay in implementation. This could not be verified since all the instructions were oral. . Curtailment quantum in Energy (MU) terms over a day was found to be in order however there were inconsistency found in block wise MW data . Detailed observations are discussed in section 4.1.3 & 4.1.4
2. indicate whether there was intentional curtailment of scheduling of power by the Respondents/SLDC or whether it was on account of grid safety measure taken by SLDC as contended by the Respondents	. From the detailed analysis of the data it can be concluded that in 5.26% (60 out of 1140 blocks where solar was curtailed) of the cases appears to be justified from grid security perspective. . Detailed observations are discussed in section 4.2

Description of the Hon'ble APTEL Direction	Findings Summary
3. Was there any fair and justifiable curtailment of power from all generators, both renewable and nonrenewable, the actual generation and injection of energy"?	1. Fairness among Solar Developers It appears that most of the solar generators with per unit cost of Rs 7.01 is curtailed more both in terms of instances of curtailment as well as in terms of percentage generation ascompared to other solar generators Detailed observations are discussed in section 4.3.1 2. Fairness among Solar & Wind Developers • In terms of Generation (MW) Based on the analysis, it can be concluded that Wind and Solar were curtailed equitably. • In terms of Energy (MU) Based on the analysis it can be concluded that curtailment among wind and solar is carried out in an equitable manner to a large extent. Detailed observations are discussed in section 4.3.2 3. Among renewable and non-renewable It was felt that it would not be appropriate to compare curtailment/ backing down of nonrenewable plants with renewable energy due to reasons cited in section 4.3.3 Accordingly, the analysis was not carried out and no attempt is made for arriving at the inference.

Note: - All the above analysis is based on post facto Frequency, generation and Drawal data whereas TN SLDC system operator may have taken actions based on prevailing frequency and estimate on likely frequency, RE generation and drawal in subsequent blocks"

117. The Respondents (R2 to R4) have contested the report of POSOCO on the basis that the report is based on data submitted by only 16 generators out of 56. The Respondents have also raised certain other objections with regards to data and analysis done by POSOCO in the report. In this regard, the following facts emerges from the report:

(i) The 16 generators who have submitted data comprised of approximately 68% of the state's total installed capacity of solar.

(ii) POSOCO has considered only those time blocks for analysis where both generator and TNSLDC data has indicated curtailment.

(iii) Generation, solar & wind curtailment data as submitted by TNSLDC is used for this analysis since the curtailment information for the entire state of TN for both solar and wind is available only from the data submitted by TNSLDC.

(iv) POSOCO has also considered frequency and margins available in state owned/ISGS conventional generators for its analysis. It has also taken into consideration the over drawal / under drawal of the state from the central grid.

(v) Irradiance based estimated generation is used in the formula for computation of curtailed energy.

118. In light of the above, we opine that the data set considered by POSOCO was representative enough (more than 2/3rd of the installed capacity) to arrive at a rationale conclusion. Further, POSOCO, has considered data submitted by TNSLDC itself for analysis. POSOCO has considered the grid frequency, drawal of state from grid and the margins available with intra-State and inter-State conventional generators. We have also noticed that the POSOCO has rightly considered Irradiance based estimated generation in the

formula for computation of curtailed energy. The Respondents have not disputed the finding of POSOCO that Solar generators with per unit cost of Rs 7.01 are curtailed more as compared to other solar generators. SLDC has made a futile attempt to defend its action stating that there is no regulation which stipulates that renewable generation cannot be curtailed before backing down conventional generators. This is not a tenable argument keeping in view the Must Run status provided in central and state grid codes. Based on detailed examination of the report we do not find any infirmity in the report and accept its findings. The Appellant has supported the report and sought direction to POSOCO to carry out the same exercise for the remaining period.

Curtailment of Power by SLDC- Intentional or on account of grid security

119. As regards the direction of the Tribunal on 26.08.2020 to 'indicate whether there was intentional curtailment of scheduling of power by the Respondents/SLDC or whether it was on account of grid safety measure taken by SLDC as contended by the Respondents', POSOCO, after conducting an independent enquiry as a third party, has concluded that only 5.26% (60 out of 1140 blocks where solar was curtailed) of the cases of back down instructions appears to be justified from grid security perspective. POSOCO has also observed that there was no abnormal voltage condition or network loading issue at 400kV level of the grid which required backing down / curtailment during the said period. Further, it is also noted by POSOCO that no specific constraint is expressed by TNSLDC at State level during the period under consideration. In this regard, the relevant extract of Para 4.2 of POSOCO report is as under:-

"4.2 Indicate whether there was intentional curtailment of scheduling of power by the Respondents/SLDC or whether it was on account of grid safety measure taken by SLDC as contended by the Respondents. The following points are noteworthy from the Grid code provision and grid conditions

It is noted that TN SLDC has indicated 'Deviation & Frequency' as the only reason for curtailment. All generators have indicated 'Grid Security' as the only reason for curtailment. Both the parties have indicated that all the instructions were oral in nature. Further APTEL has directed to Indicate whether there was intentional curtailment of scheduling of power by the Respondents/SLDC or whether it was on account of grid safety measure taken by SLDC as contended by the Respondents. Hence, it is necessary to analyse the aspects related to 'Grid security' and ascertain whether 'Grid Security' was a concern which prompted these curtailments. The Important Aspects/Definitions of 'Grid Security' is summarised below

I .Presently definition of 'Grid Security 'is not specifically defined in Grid Code.

ii. The same has been defined in the 'Report of the Expert Group: Review of Indian Electricity Grid Code' which was submitted to the CERC in January 2020 which has defined 'Grid Security' as "means the power system's capability to retain a normal state or to return to a normal state as soon as possible, and which is characterized by operational security limits;".

iii. Further 'Normal State' is defined as "means the state in which the system is within the operational parameters as defined in this Grid Code;"

iv. Further In the context of system state classification viz Normal, Alert, Emergency, Extreme Emergency and Restorative state, 'Normal State' is stated as "Power system is operating within the operational limits and equipment are within their loading limits. The system is secure and capable of maintaining stability under contingencies defined in the CEA Transmission Planning Criteria"

v. Further Operational parameters defined in IEGC are summarized below a. Frequency band : 49.90Hz-50.05Hz b. Voltages: 380kV-420kV for 400kV systems, 198kV-245kV for 220kV systems c. Equipments within their loading limits The following points are noteworthy from the Grid code provision and grid conditions

i. Grid frequency is collectively controlled by all entities connected in the grid and not by any individual state or entity. The operating frequency band of 49.90-50.05 Hz indicated above in no way implies that frequency cannot go outside this band. It can go below 49.90 Hz in case of any generator trip but actions by other entities should bring the frequency back to within the band. Adequate generation reserves for UP regulation is to be maintained at both the interstate and intra state level to minimize operation below 49.90 Hz. Similarly, adequate reduction or DOWN capability of generation would help avert operation above 50.05 Hz which signifies generation is greater than load. ii There was no abnormal voltage condition at 400kV level of the grid which required backing down / curtailment during the said period. Further No Specific constraint is expressed by TNSLDC at State level during the period under consideration.

iii. There was no network loading issue observed at 400kV level which required backing down / curtailment during the said period. Further No Specific constraint is expressed by TNSLDC at State level during the period under consideration.

iv Voltage and Transmission Constraints tend to be localised. The Curtailment instruction by TNSLDC was state-wide. There were no constraints/Violation which necessitated the state wide curtailment.

v. The area control error / Deviation from the grid is to be controlled by the State using proper load forecasting and Renewable forecasting in line with the clause 5.3 and 6.5.23 of Indian Electricity Grid Code 2010.

4.2.1 Considerations for analysis

i.As explained in paragraph 4.1.3 & 4.1.4, the blocks where both generator and TNSLDC data has indicated curtailment has been considered for analysis.

ii. Generation, solar & wind curtailment data as submitted by TNSLDC is used for this analysis.The curtailment information for the entire state of TN for both solar and wind is available only from the data submitted by TN SLDC and hence the same has been used. There may be difference between SLDC version and developer version which can be attributed to the time taken for the communication to reach the developer and may be more prominent in the initial time blocks when curtailment is instructed by TNSLDC.

iii. Considering the all the observations made on the data in preceding paragraphs, the analysis has been limited to parameters deviation, margins available in state owned and ISGS conventional generators with the presumption that proper load forecasting and renewable forecasting for state has been done by TNSLDC.

iv. The analysis of curtailment data submitted by TNSLDC is classified under three broad categories as below. Each case of curtailment is expressed as a time block of 15 minutes.

a) Cases of curtailment in which negligible margin was available for backing down from conventional energy sources.

b) Cases of curtailment where 100 % of curtailment could have been avoided with available margins

c) Cases of curtailment where specified % of curtailment could have been avoided to certain extent with available margins

Note: It would be difficult to capture the intent of SLDC. Accordingly, the classification is done to check whether the curtailment was done for grid security or otherwise rather than classifying whether curtailment was for grid security or intentional curtailment.

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Note: The above analysis does not consider the frequency profile which is integral to grid security. As stated in paragraph 4.2, frequency band prescribed in IEGC is 49.90 to 50.05 Hz. An analysis of the frequency and RE curtailment instructions shows the following.

- During 55 blocks (4.82%) out of 1140 blocks (Total curtailed blocks) frequency is above 50.05 Hz (>50.05 Hz)
- During 427 blocks (37.45%) out of 1140 blocks (Total curtailed blocks) frequency is above 50.00 Hz (>50.00 Hz). Out of these 427 blocks, TN was under drawing in 350 blocks. Out of these 350 blocks, there was no margin for backing down in thermal and hydro generation in

60 blocks so as to absorb the renewable energy. Considering grid frequency and under drawl of TN from the grid, only 5.26% (60 out of 1140 blocks) appears to be justified from grid security perspective.”

120. The above conclusion is also endorsed by the suspicion recorded by the Respondent Commission and consequential direction issued to SLDC in the impugned order as under:-

“10.14 However, it is to be emphasized that the SLDC cannot curtail the renewable power at their convenience. Backing down of the “Must Run Status” power shall be resorted to only after exhausting all other possible means of achieving and ensuring grid stability and reliable power supply. The backing down data furnished by the petitioners has not been disputed by the respondents. However, they were not able to explain the reason prevailing at each time of backing down beyond the general statements as mentioned in earlier paras. It give rise to a suspicion that the backing down instructions were not solely for the purpose of ensuring grid safety.

10.15. Under these circumstances, it is necessary to direct the SLDC to ensure evacuation of the solar power generations connected to the State grid to the fullest possible extent truly recognising the Must Run Status assigned to it in full spirit. In doing so, in view of the problems enumerated supra, the SLDC may resort to backing down in rare occasions in order to ensure the grid safety as stipulated in the Grid Code and to ensure reliable 24 x 7 power supply to the State. It is necessary to log each event of backing down whenever such instructions are issued with the reason(s) which lead(s) to that unavoidable decision. A quarterly return on the curtailments with the reasons shall be sent to the Commission. Any whimsical backing down instructions would attract penal action under section 142 of the Electricity Act on the officials concerned.”

121. It is evident that there is no dispute with regard to “Must Run Status” of

Renewable energy as per Regulation 5.2(u) and 6.5 (11) of IEGC and Regulation 8 (3) (b) of Tamil Nadu State Grid Code. The Respondent Commission has also observed in Para 10.14 and 10.15 of the impugned order that renewable energy enjoys "Must Run Status". However, the Respondents (R2 to R4) have submitted that the Grid Code stipulates back down instructions from SLDC to solar/wind generators whenever grid conditions warrant. In this regard, the Respondent Commission has pertinently observed in Para 10.14 of the impugned order that backing down of the "Must Run Status" power shall be resorted to only after exhausting all other possible means of achieving and ensuring grid stability and reliable power supply.

122. From the report of POSOCO and the observation made by the Respondent Commission in the impugned order regarding back down instructions, it is evident that back down instructions were issued to the members of the Appellant Association for reasons other than grid security. This being done by the SLDC in connivance with TANGEDCO is established from the fact that the Respondent No 2 (TANGEDCO), Respondent No 3 (TNSLDC) and Respondent No 4 (TNTRANSCO) have conspicuously come together to make common representations/submissions before the Tribunal in the present appeal through a common legal counsel. We find merit in the submission of the Appellant that SLDC, a statutory body, is not acting independently and is acting on the instructions of the Discom.

123. For the back down instructions were being issued from commercial reasons is evident from the finding in the POSOCO report that the solar generators with per unit cost of Rs 7.01 were curtailed more. The relevant extract of Para 4.3.1 of the report is as under:-

"Summary of findings

It appears from the above three indicators that most of the solar generators with per unit cost of Rs 7.01 is curtailed more both in terms of instances of curtailment as well as in terms of percentage generation as compared to other solar generators." Thus, the SLDC and TANGEDCO are acting hand in hand in the control of scheduling of cheaper power as compared to the expensive solar power in breach of their duties and statutory powers. We, therefore, hold that the action of Respondent No 2 (TANGEDCO) and Respondent No 3(TNSLDC) are undoubtedly mala-fide in issuing back down instructions for commercial reasons.

Compensation for energy backed down on the instructions of TNSLDC

124. Having held that SLDC in collusion with TANGEDCO had issued back down instructions to renewable generators for other than grid security reasons and in violation of the provisions of the Grid Code, it is to be seen if the deemed generation charges could be charged from TANGEDCO. Though the Commission has referred to the prayer for deemed generation charges as fresh prayer in the impugned order, it has been clarified by the Appellant that the prayer, being part of the prayers made in the Petition, was not a fresh prayer. The impugned order records the prayers made by the Appellant in the petition before Respondent Commission and from that we have noted that the Appellants did pray for compensation of deemed generation charges at PPA tariff. Be that as it may, the Respondent Commission did not accede to the prayer of Petition for the reasons stated in the impugned order. We have gone through the Energy Purchase Agreement signed by the members of the Appellant Association with TANGEDCO, which was brought on record. The Respondent Commission has rightly observed in the impugned order that there is no provision for payment of deemed generation charges in the contract.

125. At this stage, it would be significant to understand the gravity of this issue in the light of the special emphasis provided in the Act for promotion of renewable energy and the steps being taken by the Central Government for its promotion in the overall benefit of public at large. The emphasis of Government of India on Renewable energy to reduce dependence on fossil fuels and environmental consideration can be understood

from the following submission made by Ministry of New and Renewable Energy (MNRE) before the Respondent Commission in the impugned order

"5.1. The 4th Respondent states that as per the Paragraphs 6 and 7 of the Petition is concerned the Petitioner has expressed about their solar projects in State of Tamil Nadu and the problems being faced by them due to backing down from SLDC/ALDC. It is submitted that if the averments made by the petitioner are true then it is a matter of concern and the 4th Respondent is also of the view that generation from Renewable Projects should not be curtailed. However SLDC/ALDC and TANGEDCO/TANTRANSCO may clarify their position and stand in this regard.

5.2. With regard to Paragraph 8 & 9 of the Petition, it is submitted that the Government of India has launched the National Solar Mission in January, 2010 with the objective to promote ecologically sustainable growth while addressing India's energy security challenge with a target of setting up of 20 GW by 2022. The target was further enhanced to 100 GW by 2022. The Ministry of New and Renewable Energy (MNRE) has initiated various programmes for the development of solar projects under National Solar Mission (NSM). As on 30.11.2016, about 8875 MW of solar projects have been installed in the country. Further, the Ministry have always been promoting setting up of solar capacity in the States through its various schemes and supporting the State schemes.

5.3. It is further submitted that the purpose of solar energy is to promote the production of energy through the use of renewable energy sources in accordance with climate, environment and macroeconomic applications in order to reduce dependence on fossil fuels, ensure security of supply and condense emissions of CO_2 and other greenhouse gases. Solar energy shall in particular contribute to ensuring fulfilment of national and international objectives of increasing the proportion of energy produced through the use of renewable energy sources. Continuing on the business-as-usual development of fossil fuel based generation on long term had limitations due to various factors such as limited fossil fuel resource availability, risks in securitizing external fuel supplies, macro-economic constraints like balance of payments problems and high current account deficit, externalities of fossil-based generation, international pressures relating to climate mitigation, constraints of water availability for thermal cooling etc. Dependence on import of fossil fuel would exposes India to risks of volatile prices, foreign exchange rate risks, competition with other importers, and domestic needs of the source countries. Solar energy offers the perfect solution to meeting our energy needs without endangering the climate and the environment.

5.12. It is further submitted that this Ministry has taken up the matter with Central Electricity Regulatory Commission (CERC) vide letter dated 2nd August, 2016 following the backing down of solar projects by some load dispatch centres that the issue of backing down may be placed before Forum of Regulators so that some consensus is reached on the issue. On the issue of two part tariff, Ministry is of the view that it may be difficult as most of the cost in solar power project is fixed cost. Hence, a broad consensus on the issue of backing down of solar projects is required."

126. The above submission of MNRE is in accordance with the provisions on promotion of renewable energy in the Act and the National Tariff Policy framed by Government of India under section 3 of the Act.

Electricity Act, 2003:

Section 61. (Tariff regulations):

(h) the promotion of co-generation and generation of electricity from renewable sources of energy; Section 86. (Functions of State Commission):

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

National Tariff Policy:

4.0 OBJECTIVES OF THE POLICY

(e) Promote generation of electricity from Renewable sources;

127. From the above, it is evident that there is a clear mandate in the Act and the Policy to promote renewable energy generation. The Must Run status conferred to renewable energy is also meant for its promotion. The MNRE had also stated before the Commission that given its nature renewable energy shall not be curtailed. It is seen that the Government of India is also conscious of the backing down of solar projects by some SLDCs. The Appellant had also submitted that in many states SLDCs are violating the provisions of the IEGC and the applicable State Grid Codes by curtailing the renewable energy generation for reasons other than grid safety and security. Therefore, any action taken contrary to the objective set out in Act needs to be dealt sternly. The Appellant has also submitted that the Tribunal should look into this issue and frame certain guidelines to curb the unauthorized backing down of renewable energy generation.

128. On the issue of compensation, the Appellant has placed reliance on judgement of Hon'ble Supreme Court in Union of India vs United India Insurance Company Ltd. & Ors (1997) 8 SCC 683 to contend that nonexercise of public law or statutory power did create a private law action for damages for breach of statutory duty. Reliance is also placed on the judgement of this Tribunal in Appeal No 175 of 2012 (Tata Power Co Ltd vs MERC & Ors) wherein the Tribunal had held that the Appellant Tata Power Co Ltd. was entitled to claim compensation from SLDC after establishing that SDLC was guilty of legal mala-fide by knowingly breaching its statutory duty. The Appellant has alleged that Respondents 2 to 4 are not neutral, fair or transparent in discharging their duties and would, therefore, be jointly and severally liable to pay damages for loss of generation apart from the SLDC itself being liable to pay damages.

129. The Tribunal had considered similar issue of allegation of legal mala-fides against Maharashtra SLDC for knowingly breaching its statutory duty with the knowledge that its actions were likely to cause losses to the Appellant TATA Power Company Ltd in Appeal No 175 of 2012 (TATA Power Company Ltd vs MERC &Ors). The relevant extract of the judgement dated 14.11.2013 is as under:-

"46. Let us look into these cases one by one:

"In Case No.1999(6) SCC 667 in Common Cause, A Registered Society Vs. Union of India, the Hon'ble Supreme Court has held that the tort of "misfeasance in public office" is concerned with a deliberate and dishonest wrongful abuse of the powers given to a public offer and the purpose of the tort was to provide compensation to those who suffered loss as a result of improper abuse of power. In this judgement it has further been held that so far as the malice is concerned, while actual malice, if proved, would render Respondent's action ultra vires and tortious and it would not be necessary to establish actual malice in every claim for misfeasance in public office. This judgement was rendered by Hon'ble Supreme Court on the basis of the various English cases. The relevant extract of the judgement is as follows:-

(6) Where a plaintiff establishes (i) that the defendant intended to injure the plaintiff or a person in a class of which the plaintiff is a member (limb one) or that the defendant knew that he had no power to do what he did and that the plaintiff or a person in a class of which the plaintiff is a member would probably suffer loss or damage (limb two) and (ii) that the plaintiff has suffered loss as a result, the plaintiff has a sufficient right or interest to maintain an action for misfeasance in public office at common law. The plaintiff must of course also show that the defendant was a public officer or entity and that his loss was caused by the wrongful act.

98. So far as malice is concerned, while actual malice, if proved, would render the defendant's action bom ultra vires and

tortious, it would not be necessary to establish actual malice in every claim for misfeasance in public office. In Bourgoin SA v. Ministry of Agriculture, Fisheries and Food (1985) 3 All ER 585 to which a reference has already been made above, the plaintiffs were French turkey farmers who had been banned by the Ministry from exporting turkeys to England on the ground that they would spread disease. The Ministry, however, subsequently conceded that the true ground was to protect British turkey farmers and that they had committed breach of Article 30 of the EEC Treaty which prohibited unjustifiable import restrictions. The defendants denied their liability for misfeasance claiming that they were not actuated by any intent to injure the plaintiff but by a need to protect British interest. It was held by Mann, J., which was upheld by the Court of Appeal, that proof of actual malice, ill-will or specific intent to injure is not essential to the tort. It was enough if the plaintiff established that the defendant acted unlawfully in a manner foreseeable injurious to the plaintiff. In another decision in Bennett v. Commr. of Police of the Metropolis (1995)2 All ER 1, which was considered in Three Rivers's case 1996 (3) All ER 558 (supra), it was held that the tort of misfeasance in public office required express intent to injure."

47. The proposition which would emerge from the judgement in Common Cause is that to maintain an action for misfeasance in public office at common law, the party should establish the following ingredients of the tort for claiming compensation:-

i) It must be established that the defendant was a public officer or public entity and that the plaintiff's loss was caused by the wrongful act;

ii) It must be established that the defendant intended to injure the plaintiff or the defendant had the knowledge that he had no power to do what he did and due to the said act, the plaintiff would probably suffer loss or damage.

iii) The plaintiff has suffered loss as a result of the action of the defendant.

69. The State Commission has simply glossed over the manner in which the State Commission continued to deny scheduling of power, even after the date of quashing the Government Memorandums, and after knowing that such a refusal was contrary to law and would cause serious losses to the Appellant.

74. Similarly, SLDC also, even though it was informed that those Government memorandums have been quashed, had again refused to schedule power by merely stating that the earlier order passed by the State Commission on 29.9.2010 had not been quashed and therefore the request was refused to schedule the power. The stand now taken by SLDC both in the earlier Appeal No.32 of 2011 and in the present Appeal No.175 of 2012 that they are bound by the Government memorandums shows that SLDC for the reasons best known to it, has taken a different stand going hot and cold.

75. This conduct on the part of the State Load Despatch Centre which is public office can not be said to be bona-fide and genuine. When SLDC has got the knowledge that they can not rely upon the Government memorandums on the basis of which the earlier order passed by the State Commission on 29.9.2010 after they were quashed, even then they refused to schedule power to the Appellant as requested by the Appellant, would show the malafide attitude of SLDC and due to that the Appellant suffered a loss.

76. Therefore, we are of the view that since misfeasance has been established with the knowledge of SLDC, the Appellant is entitled to claim for compensation from SLDC."

130. Thus, the party has to establish the three ingredients of the tort, as laid down in Para 47 of the above judgement, to maintain an action for misfeasance in public office for claiming compensation. In the present Appeal, there is no denial that SLDC is a statutory body. We have held that the actions of Respondent No 2 (TANGEDCO) and Respondent No 3 (TNSLDC) are undoubtedly mala-fide in issuing

backing down instructions for commercial reasons. The misfeasance being established from the conduct of SLDC, who in collusion with TANGEDCO has made common representations/submissions in the present appeal through a common legal counsel. Further, POSOCO has indicated in the report that most of the solar generators with per unit cost of Rs 7.01 were curtailed more. The curtailment was done by SLDC at the behest of TANGEDCO for commercial reasons is also evident from the following submission made by Respondent No 2 to 4 in their common reply to the Appeal wherein it is being justified to curtail power of private solar developers.

"18. It is respectfully submitted that, with respect to the Ground (FF) to (II), the conventional power plants are operating from their rated capacity to technical minimum. The maintenance cost of the thermal generators of the state increases, cost of generation increases, Plant Load Factor (PLF) of the thermal generation decreases and all the above costs due to RE injection as Must Run is added in the Aggregate Revenue Requirement (ARR) and paid by the consumers. The private solar developers are unduly benefited at the cost of consumers. In addition to the difficulties faced during infirm penetration, the TANGEDCO faces financial implications by purchasing power at high cost in the real time market, penalty towards DSM charges etc"

131. Thereafter, the Respondents vide their common reply dated 18.10.2020 to POSOCO report have admitted to have curtailed generators with tariff of Rs 7.01/- per unit to get higher relief as under without such provision being present in the Regulations.

"It is respectfully submitted that there is no regulations laid for backing down of RE generators for grid security after backing down of conventional sources, to get higher relief, curtailment instructions issued to the higher capacity generators (1052 MW) which fall under in Rs 7.01/- category and it is essential to start to curtail in this category. If required further to maintain the grid parameters within the stipulated limits, curtailment instructions issued to the rest of the category. Also, it is submitted that low capacity generators were not asked to back down as the quantum of relief for grid requirement was meagre”

132. The above being a submission of a supposedly, independent statutory body like SLDC, shows its callous attitude towards the Regulations of the Commissions (both Central and State) and its mala-fide intent in issuing curtailment instructions. Therefore, TANGEDCO and TNSLDC were hand in glove in violating the provisions of Grid code for the commercial benefit of TANGEDCO. It is also apparent that the members of the Appellant Association have suffered financial loss as a result of the actions of TNSLDC and TANGEDCO.

133. The investments made in establishing solar projects, and the solar tariffs so determined, was premised on Must Run status as contemplated in the regulations framed under Act and the provisions in energy purchase agreement. If must run status is not adhered to by the Respondent TANGEDCO and SLDC in violation of law, the members of the Appellant association would be deprived of recovery of legitimate tariff. As solar power tariff is single part and it is predominantly fixed cost in nature, unauthorised curtailment will ultimately result in solar generators failing to repay their loans. If such actions are not penalised, the unauthorised curtailment will go unabated jeopardising the whole objective and intent of the Act. This conduct on the part of the State Load Despatch Centre which is public office cannot be said to be bona-fide and genuine. Therefore, we are of the view that since misfeasance has been established against TANGEDCO and TNSLDC, a statutory body under the Act, the Appellant is entitled to claim for compensation from TNSLDC and TANGEDCO. Both these entities shall jointly pay the compensation to the members of the Appellant Association.

134. In the light of above discussions, we issue following directions:

(i) For the period 01.03.2017 to 30.06.2017, the Respondents shall pay compensation for 1080 blocks considered by POSOCO, during which curtailment instructions were issued for reasons other than grid security, at the rate of 75% of PPA tariff per unit within 60 days from the date of this order. The computation shall be made separately for individual members of the Appellant Association based on the curtailment period/blocks falling in 1080 blocks.

(ii) POSOCO shall carryout similar exercise for the period up to 31.10.2020 on the same lines and submit report to Respondent Commission within 3 months. Tamil Nadu SLDC and Appellant are directed to submit details to POSOCO. Based on POSOCO report, State Commission shall allow compensation for the backed down energy at the rate of 75% of the PPA tariff per unit.

(iii) Curtailment quantum shall be considered as per POSOCO report.

(iv) The Respondents shall pay compensation along with interest at 9% for the entire period.

Way forward for curtailment of RE power by State Load Dispatch Centre

135. We have noticed that the analysis made by POSOCO is based on the grid parameters, margins available for backing down of conventional energy sources and the status of drawal by the State from the central grid. These parameters are apt for deciding whether the backing down is for the purpose of grid security or on commercial reasons. We also make it clear that the replacement of solar power by purchases of cheaper power from short term power markets shall also be treated as unauthorized activity. Accordingly, the following directions are issued to all the State Commissions, Discoms and SLDCs with regards to curtailment of power generated from Renewable Energy sources.

(i) For Future, any curtailment of Renewable Energy shall not be considered as meant for grid security if the backing down instruction were given under following conditions:

a) System Frequency is in the band of 49.90Hz-50.05Hz

b) Voltages level is between: 380kV to 420kV for 400kV systems & 198kV to 245kV for 220kV systems c) No network over loading issues or transmission constraints

d) Margins are available for backing down from conventional energy sources

e) State is overdrawing from the grid or State is drawing from grid on short-term basis from Power Exchange or other sources simultaneously backing down power from intrastate conventional or non-conventional sources.

(ii) As a deterrent, the curtailment of Renewable Energy for the reasons other than grid security shall be compensated at PPA tariff in future. The compensation shall be based on the methodology adopted in the POSOCO report. POSOCO is directed to keep the report on its website.

(iii) The State Load Dispatch Centre (SLDC) shall submit a monthly report to the State Commission with detailed reasons for any backing down instructions issued to solar power plants.

(iv) The above guiding factors stipulated by us would apply till such time the Forum of Regulators or the Central Government formulates guidelines in relation to curtailment of renewable energy.

136. For the foregoing reasons, we are of the considered view that the issues raised in the Appeal No. 197 of 2019 have merits and hence, the appeal is allowed.

137. The impugned order dated 25.03.2019 passed by the Tamil Nadu Electricity Regulatory Commission in Petition M.P. No. 16 of 2016 is set aside to the extent of denial of deemed generation charges / compensation for issuing backing down instructions to the Members of the Appellant's Association for reasons other than the grid security and our findings and directions, stated supra.

138. The Registry is directed to circulate copy of the Order along with POSOCO report to all the State Electricity Regulatory Commissions, MNRE and Ministry of Power to ensure compliance of directions in Para 135 above.

139. The Pending IA, if any, stands disposed of. No order as to costs."

2. Purusuant to the orders of the Appellate Tribunal, Tamil Nadu Electricity Regulatory Commission also has considerd the issues and followed the orders of the Appellate Tribunal in M.P.No.14 of 2012 dated 05.10.2021 and the following orders are passed:-

"12. Findings of the Commission:-

12.1 The present proceedings are continuation of order dated 01-07-2015 delivered by the Commission in M.P. No. 14 of 2012, D.R.P. No. 28 of 2012, M.P. Nos. 21 to 23 of 2014 and D.R.P. No. 45 of 2014 which were later taken on appeal before the Hon'ble APTEL in Appeal No. 239 of 2015, Appeal No. 203 of 2015, Appeal No. 240 of 2015 and Appeal No. 241 of 2015 and remitted back to the Commission vide judgment dated 05-02-2020 for the reason that in the said order delivered by the Commission there was deficiency in the procedure adopted by the Commission with no casting vote in the light of two different orders passed by two Members which the APTEL termed as inconclusive and inchoate there being no final order. The Tribunal directed the parties to appear before the Commission on 01-04-2020 for further proceedings in accordance with law. In a strict sense, the present Commission has to take a fresh view on these petitions or choose the view of one of the Members in the orders passed on 01-07-2015 so as to accord finality to the said order. Let us reproduce para 33, 35 and 36 of the judgment dated 05-02-2020 of APTEL:-

"33. To recapitulate, we find that there is no "order" rendered by the State Commission in the dispute brought before it. The proceedings of 01.07.2015 which are sought to be impugned by these appeals only consist of two divergent opinions. The two Members are not shown to have taken a call as to which of them is the one chosen to preside. It was thus not decided as to which of the two Members would have the second or casting vote. The proceedings of the State Commission are totally silent and, thus, it has to be concluded that no second or casting vote was ever exercised in these matters. In this view, the proceedings in disputebefore the State Commission remain inconclusive or inchoate and they are yet to be disposed of in accordance with law. ……..

35. The present proceedings have brought to our notice deficiency in the procedure adopted by the State Commission. In this view, in exercise of the power vested in us by Section 111(6) read with Section 121 of Electricity Act, 2003, we direct the State Commission to take up the matters from which these appeals arose for further proceedings and adjudication in accordance with law. Needless to add, given the time that has lapsed, rendering the dispute a protracted one, it is desirable that the State Commission renders an appropriate decision in the dispute expeditiously. 36. In view of the above, we direct the parties to appear before the State Commission for further proceedings as per law on 01.04.2020. The State Commission will be expected to hear the parties and then take an appropriate decision in the dispute at the earliest, preferably within three months of the date fixed by us for the first appearance.”

12.2. Let us also first reproduce the prayer of the petitioners in these petitions again.

The prayer of the petitioners is to-

(i) issue a direction bestowing "MUST RUN" status on all WEGs in the State of Tamil Nadu and consequently direct the Respondent not to issue orders to the WEGs to switch off generation or to back down generation;

(ii) issue appropriate directions to provide deemed generation benefits to WEGs for the loss of generation.

(iii) direct the Respondent to compensate the Petitioners corresponding to loss of generation on account of backing down instructions withretrospective effect as per the terms of the PPAs.

(iv) declare that all contracts, letters of undertaking entered into by the Respondents with WEGs in the state of Tamil Nadu in so far as theyseek to impose backing down of generation as invalid and illegal;

(v) declare that all directions issued by the Respondents to the WEGs in the State of Tamil Nadu, directing them to switch of generation or back down generation, till date as invalid;

12.3. As may be seen from the above, the two major questions which formed part of the petitions before the Commission were Must Run Status to the WEGs and the Deemed Generation benefits for loss of generation for backdown of wind energy.

12.4. At this juncture, we find that there is no need to pass any fresh order or adjudicate the issue afresh as the issue has attained finality in another matter, namely, in Appeal No. 197 of 2019 filed by National Solar Federation of India against the orders passed by the Commission in M.P. No. 16 of 2016. While the order in M.P. No. 16 of 2016 addressed one of the issues raised in these petitions namely, backdown of WEGs by upholding the Must Run Status, the issue of Deemed Generation benefit was left open in the said order. However, the said issue of deemed generation also attained finality in judgment dated 02-08-2021 of APTEL in Appeal No. 197 of 2019 when the Tribunal affirmed both the Must Run Status and deemed generation benefit as well.

12.5. Hence, we find that there is nothing to adjudicate on these petitions and the present order has to necessarily confine itself to the extent of issuing directions to the Distribution Licensee and SLDC to follow the Must Run Status in letter and spirit in line with the directions of APTEL in Appeal

No. 197 of 2019 and avoid deemed generation in its own interest.

12.6. It is further made clear that any failure to follow the orders in Appeal No. 197 of 2019 and M.P. No. 16 of 2016 would be visited with proceedings under section 142 of the Act.

12.7. Though we find that there is nothing to adjudicate on the issue of Must Run and Deemed Generation, we are of the well considered that much more remains to be done with reference to state specific conditions and there is an urgent need to issue practice directions to the SLDC and the Licensee. We are conscious of the fact that the real time operation of the grid is the function of SLDC under section 32 of the Act and the SLDC should be free to act independently. But going by the report of POSOCO which the Tribunal relied upon to set aside the orders of the Commission, we have to necessarily evolve a mechanism where there is greater co-ordination among all stakeholders, namely, RE generators, Distribution Licensee, Transmission Licensee and SLDC so as to ensure that the situation does not drift or go out of control in future.

12.8. This is all the more important in view of the fact that the concept of ring fencing has failed in the instant case and as we see from the POSOCO report, the SLDC and the Licensees have acted in concert to defeat the real purpose for which the back down should be ordered. We find, therefore, nothing amiss in stepping into rein in the SLDC and the Licensees to avoid multiplicity of litigations in various fora. It is needless to state that the issue of Must Run has witnessed litigation not only before the Commission but also before High Court and it has almost become a subject of never ending debate with both sides sticking their position with tenacity that no solution in sight for years.

12.9. In the present context where there is almost finally to issue of Must Run, we think it would be appropriate embark upon the task of supplementing the directions of the Tribunal to set things in order. It is patently clear from the order of the Tribunal that the very concept of ring fencing has failed and the SLDC has not separated itself from the Licensee in terms of its functions. We cannot hazard a guess at this stage as to whether the SLDC acted on compulsion or exercised its jurisdiction on its own by ordering backdown in concert with the Licensee, but certainly the report of POSOCO speaks for itself with the Tribunal further highlighting practice which ails the system for many years.

12.10. In view of the same, we have to go by the report of POSCO as reproduced in the order of the Tribunal which presents a disconcerting picture of affairs on backdown and take remedial measures. But the report concerns itself with the backdown instructions during a particular period of time and it cannot be assumed that the matter ends there itself and there will be no recurrence. A prudent approach is necessary to ensure that such occurrences do not become regular feature leading to litigation all over again. A Committee on the lines of Code Review Panel in the Distribution Code or Special Power Committee in DSM Regulations, in our view can be constituted to oversee and certify the validity of backdown done in each case for reason of grid security and sent to the Commission for scrutiny. Such Committees shall act as per the following directions of the APTEL in terms of backing down. The Tribunal has already defined Grid Security and there is no need to elaborate it. The relevant portions are reproduced below:-

"4.2 Indicate whether there was intentional curtailment of scheduling of power by the Respondents/SLDC or whether it was on account of grid safety measure taken by SLDC as contended by the Respondents. The following points are noteworthy from the Grid code provision and grid conditions It is noted that TN SLDC has indicated 'Deviation & Frequency' as the only reason for curtailment. All generators have indicated 'Grid Security' as the only reason for curtailment. Both the parties have indicated that all the instructions were oral in nature. Further APTEL has directed to Indicate whether there was intentional curtailment of scheduling of power by the Respondents/SLDC or whether it was on account of grid safety measure taken by SLDC as contended by the Respondents. Hence, it is necessary to analyse the aspects related to 'Grid security' and ascertain whether 'Grid Security' was a concern which prompted these curtailments. The Important Aspects/Definitions of 'Grid Security' is summarised below

I .Presently definition of 'Grid Security 'is not specifically defined in Grid Code.

ii. The same has been defined in the 'Report of the Expert Group: Review of Indian Electricity Grid Code' which was submitted to the CERC in January 2020 which has defined 'Grid Security' as "means the power system's capability to retain a normal state or to return to a normal state as soon as possible, and which is characterized by operational security limits;".

iii. Further 'Normal State' is defined as "means the state in which the system is within the operational parameters as defined in this Grid Code;"

iv. Further In the context of system state classification viz Normal, Alert, Emergency, Extreme Emergency and Restorative state, 'Normal State' is stated as "Power system is operating within the operational limits and equipment are within their loading limits. The system is secure and capable of maintaining stability under contingencies defined in the CEA Transmission Planning Criteria"

v. Further Operational parameters defined in IEGC are summarized below

a. Frequency band : 49.90Hz-50.05Hz

b. Voltages: 380kV-420kV for 400kV systems, 198kV-245kV for 220kV systems 180

c. Equipments within their loading limits

The following points are noteworthy from the Grid code provision and grid conditions

i. Grid frequency is collectively controlled by all entities connected in the grid and not by any individual state or entity. The operating frequency band of 49.90-50.05 Hz indicated above in no way implies that frequency cannot go outside this band. It can go below 49.90 Hz in case of any generator trip but actions by other entities should bring the frequency back to within the band. Adequate generation reserves for UP regulation is to be maintained at both the interstate and intra state level to minimize operation below 49.90 Hz. Similarly, adequate reduction or DOWN capability of generation would help avert operation above 50.05 Hz which signifies generation is greater than load."

12.11. Further, the Tribunal has given a categorical finding that the backdown instructions cannot be given for commercial reasons. The relevant portions are set out below:-

"Summary of findings It appears from the above three indicators that most of the solar generators with per unit cost of Rs.7.01 is curtailed more both in terms of instances of curtailment as well as in terms of percentage generation as compared to other solar generators."

"135. We have noticed that the analysis made by POSOCO is based on the grid parameters, margins available for backing down of conventional energy sources and the status of drawal by the State from the central grid. These parameters are apt for deciding whether the backing down is for the purpose of grid security or on commercial reasons. We also make it clear that the replacement of solar power by purchases of cheaper power from short term power markets shall also be treated as unauthorized activity. Accordingly, the following directions are issued to all the State

Commissions, Discoms and SLDCs with regards to curtailment of power generated from Renewable Energy sources.

(i) For Future, any curtailment of Renewable Energy shall not be considered as meant for grid security if the backing down instruction were given under following conditions:

a) System Frequency is in the band of 49.90Hz-50.05Hz

b) Voltages level is between: 380kV to 420kV for 400kV systems & 198kV to 245kV for 220kV systems

c) No network over loading issues or transmission constraints

d) Margins are available for backing down from conventional energy sources

e) State is overdrawing from the grid or State is drawing from grid on shortterm basis from Power Exchange or other sources simultaneously backing down power from intrastate conventional or non-conventional sources.

(ii) As a deterrent, the curtailment of Renewable Energy for the reasons other than grid security shall be compensated at PPA tariff in future. The compensation shall be based on the methodology adopted in the POSOCO report. POSOCO is directed to keep the report on its website.

(iii) The State Load Dispatch Centre (SLDC) shall submit a monthly report to the State Commission with detailed reasons for any backing down instructions issued to solar power plants. (iv) The above guiding factors stipulated by us would apply till such time the Forum of Regulators or the Central Government formulates guidelines in relation to curtailment of renewable energy."

12.12. As can be seen from the above, the Tribunal has settled the issue for compliance by all entities and the Commission directs that the same shall be scrupulously followed. There is a need to frame regulations to suit state specific needs and direct appointment of Committee on the lines of Code Review Panel or State Power Committee to monitor the cases of wilful backing down and set right the matter then and there. Until regulations are framed, the SLDC, the Generator, Distribution Licensee and Transmission Licensee shall abide by directions issued herein. But in the meanwhile, order to ensure that such recurrences do not become the regular feature, the Commission would like to step in and supplement the above directions to suit State specific needs as follows:-

12.13. SLDC shall evolve a protocol for curtailment of renewable sources of energy for reasons of Transmission constraints, grid safety and security. Curtailment shall be done after communicating reasons of curtailment to generators in writing or through SLDC website. Curtailments shall be done on rotational basis. Director/Operation shall monitor the procedure followed for curtailment. The LRS data and generation curtailment details shall be published in the SLDC's website. The State Power Committee formulated under Commission's DSM Regulations, 2019 shall review the back down instructions issued to the generators and verify if the curtailments have been made in accordance to the directions of the Tribunal referred to in this order.

The petitions are disposed of accordingly."

3. In view of the orders passed by the Appellate Tribunal and the Tamil Nadu Electricity Regulatory Commission, the Government of India issued a Notification on 22.10.2021 and Rules are framed namely Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 20201. Rule 3 of the said Rules provides Must-Run Power Plant, which reads as under:-

"3. Must-run power plant.—

(1) A wind, solar, wind-solar hybrid or hydro power plant (in case of excess water leading to spillage) or a power plant from any other sources, as may be notified by the Appropriate Government, which has entered into an agreement to sell the electricity to any person, shall be treated as a must-run power plant.

(2) A must-run power plant shall not be subjected to curtailment or regulation of generation or supply of electricity on account of merit order dispatch or any other commercial consideration:

Provided that electricity generated from a must-run power plant may be curtailed or regulated in the event of any technical constraint in the electricity grid or for reasons of security of the electricity grid:

Provided further that for curtailment or regulation of power, the provisions of the Indian Electricity Grid Code shall be followed.

(3) In the event of a curtailment of supply from a must-run power plant, compensation shall be payable by the procurer to the must-run power plant at the rates specified in the agreement for purchase or supply of electricity.

(4) Where, in the event of any technical constraint in the electricity grid or for reasons of security of the electricity grid, procurer gives the notice for curtailment to the must-run power plant in advance, prior to the start of the day ahead market or real time market or any other product introduced from time to time in the power exchange, the must-run power plant shall sell the electricity not scheduled by the procurer in the power exchange.

(5) The amount realised by such must-run power plant from such sale of electricity in a power exchange, after deducting actual expenses paid for the sale in the power exchange, if any, shall be adjusted against the compensation payable by the procurer under sub-rule (3).

(6) Any deficit in realisation of amount, with respect to the compensation shall be paid by the procurer on monthly basis.

(7) Any excess realisation of amount during a month from sale of electricity in a power exchange, if any, shall be carried forward and adjusted in the next month or months.

(8) The final adjustment of excess realisation of amount, if any, shall be paid

by the must-run power plant to the procurer within one month of the close of the financial year.”

4. In view of the fact that the issues raised in the writ petition on hand had been already adjudicated and reached finality, no further consideration is required in respect of the grounds raised in this writ petition and the said Rules notified would be followed by the respondents in respect of the issues raised by the petitioner.

5. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Chairman,
   Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO),
   144, Anna Salai,
   Chennai – 600 002.
2. The Chairman,
   Tamil Nadu Transmission Corporation Ltd., (TANGEDCO),
   144, Anna Salai,
   Chennai – 600 002.
3. The Director - Operations.
   State Load Despatch Center,
   144, Anna Salai,
   Chennai – 600 002.
4. Tamil Nadu Electricity Regulatory Commission,
   No.19A, Rukmini Lakshmipathy Salai,
   Egmore,
   Chennai – 600 008.

WP No.20336 of 2015

PMK(CO)
RLP(22/02/2022)