

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

PRESENT:

ThiruM.Chandrasekar Chairman
Dr.T.PrabhakaraRao Member
and
Thiru.K.Venkatasamy Member (Legal)

D.R.P. No.56 of 2014

M/s.Simran Wind Project Limited
(Name changed to M/s.Techno Electric &
Engineering Company Limited)
2F & 3F, North Block
Park Plaza
71 Park Street
Kolkata 700 016.

... Petitioner
(ThiruRahul Balaji
Advocate for the Petitioner)

Vs

1. TANGEDCO
Rep. by its Chairman Cum Managing Director
No.144, Anna Salai
Chennai – 600 002.
2. The Chief Financial Controller (Revenue)
TANGEDCO
144, Anna Salai
Chennai – 600 002.

....Respondents
(ThiruM.Gopinathan
Standing Counsel for the Respondents)

**Dates of hearing :28-07-2014; 17-09-2019; 22-10-2019;
10-01-2020; and 11-02-2020**

Date of order : 13-10-2020

The D.R.P.No.56 of 2014 came up for final hearing before the Commission on 11-02-2020 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

ORDER

1. Prayer in D.R.P. No.56 of 2014:-

The prayer of the petitioner in this D.R.P.No.56of 2014 is to pass an order directing the Respondents to forthwith make payment of a sum of Rs.4,85,21,854/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and pay additional interest @ 1% per month compounded at monthly rests on such amount from the dates the sums became due till the date of realization and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner.

2. Facts of the Case:-

This petition has been filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.4,85,21,854/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for invoices raised during the financial year 2009-10 to 2012-13 for power supplied and for further interest till realization of the said interest.

3. Contentions of the Petitioner:-

3.1. This petition is being filed seeking to claim interest on delayed payment against invoices raised by the petitioner for which payment has already been made by TANGEDCO in respect of WEGs commissioned before 19-09-2008. The petitioner is currently preferring the claim only in respect of interest portion for invoices raised during the financial year 2009-10 to 2012-13 for power supplied for which payment has already been released beyond the contractual period of payment and claim on interest for payments against unpaid invoices would arise only when payments in that regard are received and when such payments are made without interest.

3.2. The petitioner is having a total installed capacity of 156.35 MW of wind generation in Tamil Nadu. The entire generation is being injected into the State Grid under Power Purchase Agreements (PPA). Out of the said 156.35 MW, 24.65 MW have been commissioned before 19-09-2008.

3.3. The petitioner has established before 19-09-2008 Wind Power Generation projects in Tirupur, Coimbatore, Dindigul, Tirunelveli and Udumalpet Districts in the State of Tamil Nadu with a total capacity of 24.65 MW. The power generated by these units is being sold to the 1st respondent under the terms of agreements executed by the petitioner with the TANGEDCO.

3.4. The location of its Windmills, date of commissioning, capacity and HT SC Nos. are set out herein below:-

| No. | Location of Windmill & Jurisdictional TANGEDCO Circle | Capacity of Windmill (MW) | HT SC. No. | WTG No. | Date of Commissioning |
|-----|---|---------------------------|---------------|---------|-----------------------|
| 1 | Dindigul | 0.60 | D-106 | G 306 | 23-08-2007 |
| 2 | Dindigul | 0.60 | D-105 | G 309 | 23-08-2007 |
| 3 | Dindigul | 0.60 | D-114 | G 556 | 26-09-2007 |
| 4 | Udumalpet | 1.50 | 1486 | G 893 | 29-09-2007 |
| 5 | Udumalpet | 1.50 | 1487 | G 967 | 29-09-2007 |
| 6 | Coimbatore | 1.50 | 1485 (202) | P881 | 29-09-2007 |
| 7 | Udumalpet | 1.50 | 1525 | Q 394 | 29-03-2008 |
| 8 | Udumalpet | 1.50 | 1529 | G 970 | 30-03-2008 |
| 9 | Tirupur | 1.50 | 589 (708) | Q 48 | 30-03-2008 |
| 10 | Tirupur | 1.50 | 588 (707) | Q 51 | 30-03-2008 |
| 11 | Dindigul | 0.60 | D-146 | G 557 | 31-03-2008 |
| 12 | Udumalpet | 1.50 | 1533 | Q 199 | 31-03-2008 |
| 13 | Udumalpet | 1.50 | 1535 | Q 220 | 31-03-2008 |
| 14 | Dindigul | 0.60 | D-156 | E 777 | 28-07-2008 |
| 15 | Dindigul | 0.60 | D-155 | E 779 | 28-07-2008 |
| 16 | Dindigul | 0.60 | D-154 | E 780 | 28-07-2008 |
| 17 | Dindigul | 0.60 | D-157 | E 781 | 28-07-2008 |
| 18 | Dindigul | 0.60 | D-158 | E 782 | 05-08-2008 |
| 19 | Tirunelveli | 1.50 | 2658 | R433 | 30-08-2008 |
| 20 | Tirunelveli | 1.50 | 2659 | R441 | 30-08-2008 |
| 21 | Tirupur | 1.50 | 631 (754) | E 86 | 01-09-2008 |
| 22 | Coimbatore | 1.25 | 1017 | P 329 | 23-10-2008 |

3.5. The power generated by these units is being sold to TANGEDCO under the respective agreements. The petitioner has been raising invoices from time to time in accordance with the Contracts and Tariff Orders. However, for the past few years, the payments that have been received from TANGEDCO are being consistently delayed. Even when payments are made belatedly, they are being made without any interest for such delay.

3.6. In Tariff Order No.1 of 2009 issued by the Commission, there is a specific instruction of interest payment. Para 8.11.1 of the Tariff Order deals with billing and payment and is extracted hereunder:-

8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”

3.7. The Hon'ble APTEL in its judgment in Chairman, TNEB &Anr.V. Indian Wind Power Association and Ors.in Appeal No.11 of 2012 dated 17-04-2012 held as follows:-

“13. It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made after the said time period would be subject to payment of interest as indicated above.

17. In any power project, one of the important aspects is the promptitude in payment since the delays would seriously affect the viability of the project. All these projects are substantially funded through finances obtained from various funding organizations require regular repayment of principal loan amount with interest by the generators. Only if regular payments are made for the power generated and supplied, the loans can be serviced along with the promised return of investment.

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The wind power generators are entitled for payment of interest on delayed payment made by the appellant for the purchase of the power from the generators.”

3.8. Therefore, all Wind Generators are entitled to interest on delayed payment @ 1% per month for every month's delay from the due date. Only a 30 day time limit is provided for payment and 5 days for submission of bill from the date of invoice and any delay beyond that will have to be made with interest @ 1% per month compounded at monthly rests till the payment of interest is made.

3.9. In the light of the specific provision contained in Tariff Order No. 1 of 2009 on interest on delayed payments, which is applicable to all WEGs commissioned after 19.09.2008 such as those of the petitioner, and because of the ruling of the Hon'ble APTEL in Appeal 11 of 2012, the petitioner is entitled to interest on delayed payments on all WEGs for which PPA has been entered into by the petitioner with the respondent. The petitioner has raised invoices for power supplied from its WEGs on a monthly basis as per the terms of the EPA.

3.10. However, these payments have been delayed by as much as one year or more. Despite the substantial delay, TANGEDCO has not made any payment of interest on delayed payments contrary to the order of the Hon'ble APTEL and the provisions of the Tariff Order No.1 of 2009 and the terms of the agreement.

3.11. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.4,85,21,854/- towards interest on delayed payments in respect of WEGs installed before 19-09-2008.

3.12. The substantial delays in making payments by the respondent have caused severe difficulties for the petitioner in meeting the financial obligations towards banks and financial institutions. The interest on delayed payments is much lower than the payments the petitioner has to make to its banks / financial institutions under the term loans. The petitioner further submits that the delay in payments by TANGEDCO has also hampered the petitioner's capacity to carry on its business.

3.13. The petitioner had sent letters of demand to the respective circles on 06-11-2012, 07-03-2013, 26-08-2013 and 20-02-2014 seeking payment of interest on delayed payments and there has been no response or positive action from the respondents. The respondents have been making ad-hoc payments from time to time which are substantially delayed and even while making such admittedly belated payment, they have failed to pay interest on such delayed payments.

3.14. The petitioner is paying a substantial court fee of Rs.4,85,219/-to file the instant petition for recovery of interest of delayed payments despite being entitled to the same as per the order of APTEL, in Appeal No.11 of 2012 and Tariff Order No.1 of 2009 issued by this Commission. The action of TANGEDCO in not paying the petitioner interest on delayed payments, which the petitioner is legally entitled to, is contrary to the terms of the contract / EPA and binding judgments and the

petitioner submits that it ought to be awarded the costs of the petition including court fees and legal expenses incurred.

4. Seeking for Amendment of Cause Title:-

The name of the Petitioner Company got changed from M/s.Simran Wind Project Limited to M/s. Techno Electric & Engineering Company Limited and an affidavit to that effect was filed on 10-09-2019.

5. Hearing held on 17-09-2019:-

In the hearing held on 17-09-2019, the petitioner counsel has been directed to file Memo for acceptance of 6% of interest on the payment from TANGEDCO.

6. Hearing held on 22-10-2019:-

In the hearing held on 22-10-2019, the petitioner's counsel has filed an affidavit accepting the offer of TANGEDCO to pay 6% interest on the belated payment. In the affidavit, the petitioner has stated as follows:-

- (a) The payment of 6% interest shall be paid by TANGEDCO on all payments made belatedly till date.
- (b) Such payment shall be made within 60 days of filing of this affidavit before the Commission.
- (c) The Commission may record such payment only on the basis of the present affidavit and this shall not be treated as a precedent for further belated payments, in respect of which interest at the rate provided for in the Tariff Orders, i.e. at 1% per month.

- (d) The court fee paid by the petitioner may be directed to be paid by TANGEDCO, in addition to such interest as payment towards cost of this D.R.P.
- (e) In the event, the full payments due are not settled and paid within 60 days, the entire sums due towards interest become automatically due and payable at the full contractual rate and payment in that regard shall be paid by TANGEDCO.

7. Hearing held on 11-02-2020:-

In the hearing held on 11-02-2020, the Counsel for the petitioner submitted that payment has not been made fully and only part payments have been made. The Commission directed both parties to file Written Submissions within 2 weeks. However, the Written Submissions has not been filed by any part.

8. Findings of the Commission:-

8.1. This petition has been filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.4,85,21,854/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for the invoices raised during FY 2009-10 to 2012-13 for power supplied and pay additional interest @ 1% per month compounded at monthly rests on such amount from the dates the sums became due till the date of realization and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner.

8.2. The hearing in the matter took place on various dates. During the hearing on 17-09-2019, the counsel for the petitioner was directed to file a Memo for accepting of 6% interest on payment from TANGEDCO. On 22-10-2019, the Counsel for the Petitioner agreed to the offer of TANGEDCO. The petitioner also filed an affidavit agreeing to accept the offer of TANGEDCO for payment of interest at 6% per annum. In the affidavit, the petitioner has stated as follows:-

- (a) The payment of 6% interest shall be paid by TANGEDCO on all payments made belatedly till date.
- (b) Such payment shall be made within 60 days of filing of this affidavit before the Commission.
- (c) The Commission may record such payment only on the basis of the present affidavit and this shall not be treated as a precedent for further belated payments, in respect of which interest at the rate provided for in the Tariff Orders, i.e. at 1% per month.
- (d) The court fee paid by the petitioner may be directed to be paid by TANGEDCO, in addition to such interest as payment towards cost of this D.R.P.
- (e) In the event, the full payments due are not settled and paid within 60 days, the entire sums due towards interest become automatically due and payable at the full contractual rate and payment in that regard shall be paid by TANGEDCO.

8.3. On 11-02-2020, the Counsel for the Petitioner submitted that only part payment has been made and the Commission therefore directed both the parties to file their Written Submission within 2 weeks. However, none of the parties has filed

any Written Submission. Hence, the Commission is inclined to decide the issues based on available records.

8.4. On perusal of material records, it is seen that the Respondent, TANGEDCO has not denied its liability for payment of interest. In such circumstances, having failed to avail the payment of reduced rate of interest at 6% per annum, the respondent is liable to pay interest as per the contractual terms or orders of the Commission in force as the case may be. In this connection, our attention is drawn to the provisions of Tariff Order No.1 of 2009 dated 20-03-2009 issued by the Commission which provides as follows:-

8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”

8.5. The Hon'ble APTEL in its order dated 17-04-2012 in Appeal No.11 of 2012 has upheld the payment of interest on delayed payment to the wind energy generators and this order has also been upheld by the Hon'ble Supreme Court in CFC Vs. GangadharNarasinghadasAgarwal in Review Petition (Civil) 1606 of 2018 in Appeal No.5465 of 2014 dated 16-08-2018.

8.6. In view of the above, the Respondent, TANGEDCO is liable to pay 1% interest for delayed payment beyond 30 days of receipt of the bill as per the above Tariff Order for the balance amount that remains unpaid by the Respondent, TANGEDCO.

8.7. It is seen from the typed set of papers filed along with the petition (vide pages 1-16 of the typed set) that Rs.4,85,21,854/- (Rupees four crores eighty five lakhs twenty one thousand eight hundred and fifty four only) is the interest due on the belated payment of invoices received for the year 2009 to 2013. The limitation period for the money claim is 3 years from the date on which cause of action arose. In the case of interest on delayed payments, the cause of action for claiming interest for the delayed payment commences from the date of receipt of the payment on invoice. The present petition has been filed on 16-06-2014 and hence if the date of payment of invoice is prior to 16-06-2011, the claim of interest on such delayed payment is barred by limitation. Law is also well settled on the point that it is for the concerned court or Forum to examine the preliminary question of limitation even in the absence of pleadings to that effect and hence limitation factor is necessarily required to be considered.

8.8. In view of the above, the respondent is directed to rework the calculation for payment of interest at 12% per annum for the delayed payment of invoice, taking into account the limitation factor as set out in para 8.7 above, after deducting the payments if any already made within the period of 3 months from the date of this

order. This is also subject to acknowledgement of liability if, any, made in writing by TANGEDCO after 16-06-2011.

In the circumstances, there will be no order as to the costs.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.PrabhakaraRao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission