

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 15618/2017

TAMIL NADU GENERATION AND DISTRIBUTION
CORPORATION LTD. & ORS.

Appellant(s)

VERSUS

M/S. CENTURY FLOUR MILLS LTD. . & ANR.

Respondent(s)

([I.A.NO. 107952/2021-CLARIFICATION/ DIRECTION])

Date : 25-01-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)

Mr. Jaideep Gupta, Sr. Adv.
Mr. D. Kumanan, AOR

For Respondent(s)

Mr. Rahul Balaji, Adv.
Mr. Senthil Jagadeesan, AOR
Ms. Sonakshi Malhan, Adv.
Mr. Sajal Jain, Adv.
Ms. Remya Raj, Adv.

Mr. Rohit K. Singh, AOR
Ms. Pavitra Balakrishnan, Adv.
Mr. Pritam Bishwas, Adv.
Mr. Anant Mishra, Adv.

UPON hearing the counsel the Court made the following

O R D E R

In pursuance to our last Order we have the benefit of the affidavit filed by the Regulatory Authority i.e. Tamil Nadu Electricity Regulatory Commission (TNERC) which was impleaded as the second respondent. The affidavit is an exhaustive one setting

forth the history of the issue which arises from the mandate under Section 86(1)(e) of the Electricity Act, 2003, to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures and the obligation of the entities to purchase electricity generated from the renewable energy method. The affidavit states that there is a mis-match between the availability of renewable power in a particular region and the need on the part of all entities to satisfy the renewable purchase obligation, as the resources in that behalf are not met even across the Country. To illustrate, electricity generated through wind mills is an aspect more feasible in Tamil Nadu which is in the forefront of the same.

Learned counsel for the respondent No.1 seeks to canvas his case on the basis of averments in the affidavit starting from para 20 onwards to emphasis that the appellant was required to seek approval before hand for any change in priority of adjustment which they never sought to do. In fact, what is stated is "however, there is no dispute whatsoever that there was a direction not to make adjustment without the approval of the respondent Commission". Learned counsel points out that it is a case of priority of adjustment of generated units between preferential tariff Wind mills and REC Windmills, whereas the subject matter in M.P. No.14 of 2017 was one of priority of adjustment between Preferential Tariff Windmills commissioned during different tariff periods.

On the other hand, learned counsel for the appellant seeks to draw strength from what has been stated in the affidavit in para 23

onwards to point out that the issue is of whether there should be banking for a period of 12 months or 1 month which he claims was stated to be on par with the wind mills under the normal scheme qua the aspect of 12 months banking period. However, on the date of issue of order in DRP No.19 of 2013 the wind mills under REC scheme had one month banking and thus the energy from wind mills under REC scheme would lapse without getting adjusted, an aspect on which he submits that the Commission is ad-idem with the stand of the appellant. He also points out the significance of the observation that a decision to treat both the schemes on par, the prayer of the appellant to set aside the judgment in Appeal No.53 of 2016 reflects the correct position and thus submits that the impugned orders are liable to be set aside. The Commission had been cautious to state that as the matter is pending in the present civil appeal, this Court would have to take the final call in that aspect.

The other significant aspect as appears from the affidavit of the Commission is that the proceedings in MP No.24 of 2021 are still pending and the Commission is in the process of framing a regulation for priority adjustment of wind mill energy but that will only be prospective in nature. To the extent the regulation need to be framed, it is submitted that the matter can be remanded to respondent No.2.

We had given a thoughtful consideration to the aspects urged by the learned counsels.

In our view, the regulations are a necessity as to some extent there arises a battle between generation of electricity through conventional & non-conventional sources of energy. The attempt should be to encourage energy through non-conventional resources in a larger perspective but often different factors weigh where environment is involved and economics at times does not work in favour of non-conventional sources. We would naturally be inclined to support a methodology which would encourage environment, moreso in the current scenario as has emerged not only in our country but all over the world.

It is thus of utmost urgency that firstly the regulations are put in place. On our query learned counsel appearing for respondent No.2 does not have clear instructions as to why and when regulations will be framed though she says that the stakeholders had to give their suggestions by 03rd of August, 2021. The needful having been done almost six months ago, we would have expected regulations to be in place by now.

We would like to have clear inputs from learned counsel for respondent No.2 as to when the regulations will be in place because we do believe that this aspect cannot be delayed any further. If the regulations are ready, let us make it clear that nothing prevents the regulations from being notified forthwith and we being informed accordingly.

That, however, leaves us with the second aspect which is the past where the impugned orders have favored respondent No.1. The

question is how the priority in adjustment would be effected when the banking period is changed from 1 month to 12 months for REC wind generators.

This is an aspect on which either we have to take a call or as initially thought by issuing notice on 18.9.2019 the matter should be remitted to the Appellate Tribunal. We call upon the parties to file a short synopsis running into not more than two pages each limited to the aforesaid aspect and we will hear the oral submissions of the parties by giving half an hour to each side. The synopsis be placed before us at least two days before the next date of hearing.

List on the regular board in the week commencing 15th February, 2022.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER