

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 93 of 2013

Date: 8 June, 2017

CORAM: Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member

***Suo-moto* hearing for compliance of Appellate Tribunal for Electricity(ATE)'s Judgment dated 26 February, 2016 in Appeal No 210 of 2014 filed by Indian Wind Power Association (Maharashtra State Council) challenging the Commission's Order dated 20 June, 2014 in Case No 93 of 2013.**

Indian Wind Power Association (Maharashtra State Council)Original Petitioner
(IWPA-MSA)

V/s

Maharashtra State Electricity Distribution Company Ltd.(MSEDCL) ...Original Respondent -1
Maharashtra Energy Development Agency (MEDA) ...Original Respondent -2

Appearance

For the Original Petitioner : Mr. S. Parvathinathan (Rep.)
For the Original Respondent -1 : Ms. Deepa Chawan, (Counsel)
: Mr. S.S. Rajput (Rep.)
For the Original Respondent -2 : Mr. S.P. Bodke (Rep.)

For Authorized Consumer Representative : Dr.Ashok Pendse (TBIA)

Daily Order

Heard the Advocate/Representative of MSEDCL, Representative of IWPA-MSA and Authorized Consumer Representative.

1. MSEDCL stated that:

a) This matter has been initiated by the Commission for compliance of ATE's Judgment dated 26 February, 2016 in Appeal No 210 of 2014 filed by the Appellant IWPA-MSA (the Original Petitioner in Case No 93 of 2013) challenging the Commission's Order dated 20 June, 2014 in Case No 93 of 2013.

b) MSEDCL has filed a Civil Application before the Supreme Court on 27 April, 2016 as Diary No. 14929 of 2016 (now numbered as Civil Appeal No 1578 of 2017) challenging the ATE Judgment dated 26 February, 2016.

- c) Pursuant to and in compliance of the ATE Judgment, MSEDCL has executed long term Energy Purchase Agreement (EPA) s with wind projects commissioned in FY 2014-15 and 2015-16 excluding the impugned/contentious clauses which were the subject matter of Case No. 93 of 2013 and the ATE Judgment, as submitted in its reply dated 5 June, 2017.
2. The Commission observed that its Office had sought the status of compliance by MSEDCL of the ATE Judgment through more than 10 letters from May, 2016 onwards. In its response dated 27 June, 2016 MSEDCL stated that it has executed EPAs with retrospective effect with 153 Wind Power Projects and has complied with the above ATE Judgment. However, MSEDCL did not specifically indicate whether it has removed the impugned/ contentious clauses while executing the EPAs, and has not responded to the Commission's query dated 9 August, 2016 till date. Consequently, the Commission has initiated this suo-moto proceeding to ensure the compliance of the ATE Judgment.
 3. The Commission also observed that MSEDCL's Reply dated 5 June, 2017 is not clear and does not provide the following specific information:
 - a) Number of EPAs entered into with Wind Power Developers with impugned / contentious clauses, prior to the ATE Judgment.
 - b) Number of such EPAs that MSEDCL had revised/ altered /modified to exclude the impugned/contentious clauses and/or communicated such revision / alteration / modification to the concerned Wind Power Developers, after the ATE Judgment.
 - c) Number of EPAs that MSEDCL has entered into with Wind Power Developers without the impugned/contentious clauses after the ATE Judgment.
 4. MSEDCL confirmed that, prior to the ATE Judgment, it had executed 153 EPAs with the impugned/contentious clauses. However since the impugned/contentious clauses were struck down by the ATE, post this Judgment it had not thought it necessary to revise/modify these 153 EPAs and was not implementing these clauses. After the ATE Judgment it has executed 72 EPAs. None of them contain the impugned/contentious clauses. The Commission observed that MSEDCL should have intimated the Commission as well as the concerned Wind Generators and /WPA about the removal of the impugned/contentious clauses in the 153 EPAs immediately after the ATE Judgment, which it has not done. MSEDCL regretted this omission and not responding to the Commission earlier.
 5. The Commission asked the Representative of IWPA-MSA whether his Association has informed its Members about the ATE Judgment dated 26 February, 2016. He stated that ATE Judgment is known to all its Members, IWPA so far has not received any feedback/complaint from its Members on the EPA/PPA issues after this Judgment.

6. Dr. Ashok Pendse, on behalf of Thane Belapur Industries Association (TBIA), an Authorised Consumer Representative, stated that not all the 153 Wind Power Developers may be the Members of the IWPA. Therefore, MSEDCL on its part needs to intimate to all the 153 Wind Power Developers about the removal/non-implementation of the impugned/contentious clauses in their respective EPA/PPAs post the ATE Judgment dated 26 February, 2016.
7. The Commission directs MSEDCL to intimate all the pre-existing EPA holders accordingly within 15 days. MSEDCL shall submit a copy of its letter to the Commission within a week thereafter, along with a sample copy of one of the new EPAs entered into after the ATE Judgment.

The Case is reserved for Order subject to submission of copies by MSEDCL as directed above.

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Azeez M. Khan)
Member**