

APTEL Held That Excess Generation By Solar Generators Cannot Be Restricted



SKV Law Offices successfully represented National Solar Energy Federation of India. (“NSEFI”) in the case of National Solar Energy Federation of India. v. Tamil Nadu Electricity Regulatory Commission & Ors., Appeal No. 119 of 2021 (“Appeal”) before the Appellate Tribunal for Electricity (“Hon’ble Appellate Tribunal”). NSEFI had filed the Appeal praying for setting aside of the Order dated 22.12.2020 (“Impugned Order”) passed by Ld. Tamil Nadu Electricity Regulatory Commission (“TNERC”), wherein TNERC, while endorsing the Circular dated 14.06.2017 (“Impugned Circular”) issued by TANDECO, restricted the payment of excess generation by the Solar Power Generators (“SPGs”) beyond the normative Capacity Utilization Factor (“CUF”) of 19%.

Hon’ble Appellate Tribunal, while setting aside the Impugned Order passed by TNERC and Impugned Circular issued by TANGEDCO, held that the Impugned Order is essentially an amendment to the Energy Purchase Agreement (“EPA”) executed between the parties to the extent that condition of quantum restriction to 19% CUF was not envisaged in the EPA. The Hon’ble Tribunal upheld the supremacy of party autonomy and held that such an amendment is beyond the scope of powers of TNERC, as it is settled law that amendment of concluded Contract is beyond the regulatory ambit of State Commissions.

The Hon’ble Appellate Tribunal further observed that TNERC has neither determined the tariff for generation beyond CUF of 19% nor below the CUF of 19%, and no range has been specified in the tariff order. Therefore, the Hon’ble Appellate Tribunal held that the same cannot be used to interpret that the tariff order places a ceiling on the maximum value of CUF of 19%.

With these observations, Hon’ble Tribunal held that TANGEDCO is required to compensate SPGs for the excess power it consumed as produced by SPGs and has profited from selling it to end users. Accordingly, TANGEDCO was directed to make payments including the payment at the rate of the relevant Tariff Order/ EPAs for energy procured from the solar projects of the SPGs up to CUF of 19% and to further make additional payments for the excess energy procured from or supplied by the SPGs at the rate of 75% of the tariff as applicable under the provisions of the EPAs, within six months from the date of this Judgment.

The judgement provides the SPGs with much-needed consolation in light of the arbitrarily curtailed and unilaterally reduced prices which they are currently receiving. The judgement shall pave the way for India’s goal of 500 GW of renewable energy by 2030 by encouraging SPGs to increase their production of solar energy.

NSEFI was advised and represented by Mr. Shri Venkatesh, Managing Partner, Mr. Bharath Gangadharan, Senior Associate, Mr. Ashutosh K. Srivastava, Senior Associate, Mr. Nihal Bhardwaj, Associate and Mr. Kartikay Trivedi, Associate.

The Order passed by the High Court can be accessed [here](#).