

The Supreme Court of India grants relief to wind power generators holding that Generation Based Incentive must be disbursed to generating companies over and above the tariff

The Supreme Court of India (“**Supreme Court**”) in the case of *Southern Power Distribution Company of Andhra Pradesh Limited and Anr. vs. Green Infra Wind Solutions Limited and Ors*¹ has dismissed civil appeals filed by the distribution licensees of Andhra Pradesh (“**AP Discoms**”) while holding that Generation-Based Incentive (“**GBI**”) granted by a Central Government Policy to wind power generators cannot be taken away by a State regulator and re-distributed to distribution licensee’s consumers by factoring the incentive into generation tariff.

JSA represented Tata Power Renewable Energy Limited before the Supreme Court.

Brief facts

1. On December 17, 2009, the Ministry of New and Renewable Energy (“**MNRE**”) introduced the GBI scheme, to attract large investments in the renewable energy sector and increase quantum of grid-interactive renewable energy power.
2. GBI granted wind power generators a benefit of 50p (fifty paise) per unit of electricity fed into the grid for 4 (four) to 10 (ten) years, up to INR 62,00,000 (Indian Rupees sixty-two lakh) per megawatt. The scheme was applicable to wind power generators which have not been availing the benefit of accelerated depreciation and were duly registered with Indian Renewable Energy Development Agency. GBI was envisaged as a benefit ‘over and above’ the tariff determined by SERC, i.e., complementary to the approved tariff.
3. On July 31, 2015, the Andhra Pradesh Electricity Regulatory Commission (“**APERC**”) notified the APERC (Terms and Conditions for Tariff Determination for Wind Power Projects) Regulations, 2015 (“**APERC Tariff Regulations**”) which factored various parameters, including costs, loans, return on equity, depreciation, interest on loan, interest on working capital, operation and maintenance expenses etc. for determining tariff. Regulation 20 of the APERC Tariff Regulations provides that State Electricity Regulatory Commissions (“**SERCs**”) ‘shall’ take into consideration any incentive or subsidy offered by the Central or State Government.
4. On August 1, 2015, the APERC notified levelised generic preferential tariff for wind power projects set up between July 31, 2015 to March 31, 2016, wherein the APERC did not account for GBI being availed by the generating companies.
5. The AP Discoms belatedly filed a petition before the APERC to amend the tariff order by taking into account the GBI. APERC allowed the petition and permitted deduction of GBI amounts from the tariff.

¹ Civil Appeal No. 4495 of 2025 [2026 INSC 294] (March 25, 2026)

6. Thereafter, the generating companies filed an appeal before the Appellate Tribunal of Electricity (“**APTEL**”) wherein APTEL directed AP Discoms to refund amounts deducted for adjustment of GBI from tariff paid, along with interest. APTEL ruled that it is not open for the APERC to amend/vary levelised tariff except in exceptional circumstances or in cases of infringement of statutory regulations, and no such case was made out.
7. Aggrieved by APTEL’s order, AP Discoms filed a civil appeal before the Supreme Court.

Issues

The Supreme Court dealt with the following issues:

1. scope and ambit of SERC’s powers and jurisdiction to determine tariff; and
2. duties and obligations of SERC’s while determining tariff.

Findings and analysis

1. The Electricity Act, 2003 is a complete code and the tariff determination is the exclusive province of SERCs.
2. SERCs have plenary powers over tariff determination and are also empowered to consider a grant made by the Central Government under Article 282 of the Constitution of India, 1950. However, such powers cannot be exercised in a manner that nullifies the policy intent and must be exercised keeping in mind the purpose and objective of a policy or grant.
3. Policy decisions taken based on national and international de-carbonisation targets must be appropriately factored at various stages to ensure that investment in renewable energy is adequately promoted.
4. Owing to the plurality of duty bearers, i.e., Central and State Government, SERCs, APTEL, Central Electricity Authority, the MNRE, policy makers and licensees, it is imperative that domain regulators act in larger interest and facilitate a collaborative enterprise with all stakeholders, to steer towards a common goal of ensuring supply of electricity. The powers of these duty bearers must be read harmoniously such that each operates within their sphere without rendering the other irrelevant.
5. APERC, while exercising its powers, was obliged to provide the benefit of GBI in terms of the purpose and object of the GBI Policy i.e., to incentivise renewable energy generators. The GBI scheme was intended as a ‘generator-focused incentive’ and not a ‘consumer subsidy’ and was linked to realisation of national and international policies. APERC should respect and give effect to the GBI scheme as is.
6. GBI is intended to be disbursed to generating companies over and above the tariff.

Conclusion

The Supreme Court dismissed the civil appeal filed by the AP Discoms holding that GBI is a generation incentive by the Central Government for wind generators. It cannot be converted into a consumer benefit by factoring the same in the generation tariff. It is over and above the tariff. The Supreme Court noted that the GBI scheme was generator-centric and not consumer-centric. In exercise of its plenary powers of tariff determination, the APERC could not have distorted the intended purpose of the GBI Scheme by passing it onto the distribution licensees/consumers. The Supreme Court has cautioned that regulators should not act in silos and must take a holistic approach while exercising their statutory functions.

Supreme Court’s progressive judgment marks a significant win for renewable energy generators in the State of Andhra Pradesh, bringing to an end over 8 (eight) years of arbitrary tariff deductions by AP Discoms. The judgment paves way for reinforcing investor confidence in the power sector, especially in the State of Andhra Pradesh where distribution licensees have sought to undermine investments made in renewable energy by belatedly seeking unilateral reduction in tariff through various means, including arbitrary deductions qua GBI.

Electricity and Power Practice

JSA is the leading national practice in the power sector – conventional and non-conventional. JSA provides legal services at all stages of the value chain in the sector - across the spectrum of contractual, commercial, policy, regulatory and legal issues. We represent clients in all segments: generation, transmission, distribution and trading. JSA serves its clients by transaction-specific integrated teams across various locations and practice areas (Banking & Finance, Mergers & Acquisition and Private Equity, Projects and project related contracting, Dispute Resolution, Taxation, Regulatory proceedings and Policy advisory).

JSA has been regularly engaged in; (a) providing policy advice to Governments of Bangladesh and Maldives, as also the Government of India besides various Indian states. Also, JSA partners have presented expert testimony to the Parliamentary Standing Committees and the Forum of Regulators on challenges faced by the power sector and proposed legislative and policy changes, development financial institutions like the World Bank, the Asian Development Bank, DfID, USAID regulatory authorities and industry bodies; (b) advising project developers, investors, suppliers and contractors on commercial / transactional issues and all aspects of licensing, market structures, competition, performance standards and tariffs; (c) advising financial institutions and borrowers in relation to financing transactions; (d) Advising clients on sustainable development issues like clean development mechanism and environmental compliances; and (e) specialised dispute resolution.

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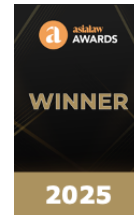
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