

The above cases came up for hearing before the Commission on 14-10-2009 and 23-10-2009 and after giving reasonable opportunities to both parties to present their cases and after perusing the connected records and after hearing the arguments of both the parties, the Commission passes the following

ORDER DATED: 28th OCTOBER 2009

The Order dated 28-11-2008 of the Commission in M.P. No.42 of 2008 was challenged by the TNEB in the High Court of Madras in Writ Petition No.30890 of 2008. It was disposed of by the High Court with the following order on 30-3-2009.

"The petitioner has come forward with the present writ petition calling for the records relating to the order dated 28-11-2008 made in M.P.No.42 of 2008 and the consequential order dated 24-12-2008 in R.:P.No.2 of 2008 on the file of respondent Commission, challenging the said proceedings in so far as it relates to banking of wind energy and the enhancement of the demand of energy quota in favour of the wind mill captive consumer.

2. Admittedly, the petitioner has got a remedy of filing an Appeal before the Appellate Tribunal for Electricity as contemplated under Section 111 of the Electricity Act, 2003. It is also been reiterated by the Hon'ble Apex Court in the case of HP Electricity Regulatory Commission vs. HP State Electricity Board reported in (2006) 9 SCC Page 233.

3. In view of the same, the petitioner is directed to approach the Appellate Tribunal for Electricity against the order of the respondent under challenge in this writ petition. It would be therefore suffice to pass the following order by consent.

(a) The petitioner has to approach the Appellate Tribunal for Electricity challenging the order of the respondent dated 28-11-2008 made in M.:P.No.42 of 2008 and the consequential order dated 24-12-2008 in M.P.No.2 of 2008 within a period of two weeks from the date of receipt of this order.

(b) The unutilized bank units shall not lapse as on 31-3-2009 but it is subject to the outcome of an Appeal.

(c) The stay that has been granted by this court would be in operation for a period of four weeks.

(d) The petitioner is at liberty to approach the Appellate Tribunal seeking interim orders.

With the above observations and directions, the writ petition and miscellaneous petitions are disposed of. No costs."