



2026:DHC:8532-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 03.09.2026

Judgment Delivered on: 30.09.2026

CNR No. DLHC010247972025

+ W.P.(C) 5531/2025 & CM APPL. 25158/2025, CM APPL. 25159/2025, CM APPL. 25160/2025 & CM APPL. 4479/2026

INDIAN WIND POWER ASSOCIATION & ORS.Petitioners

versus

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF
POWER MOP & ORS.Respondents

Advocates who appeared in this case

For the Petitioners : Mr. Jayant Mehta, Senior Advocate
with Mr. Om Shelat, Mr. Pratyush
Singh, Mr. Vishrov Mukerjee, Mr.
Damodar Solanki, Mr. Snehal
Upadhyay, Ms. Juhi, Advocates.

For the Respondents : Ms. Radhika Bishwajit Dubey, CGSC
with Mr. Vivek Nagar, GP, Ms.
Gurleen Kaur Waraich, Mr. Kritarth
Upadhyay, Mr. Vivek Sharma, Mr.
Amulya Dev Sharma and Mr.
Saksham Sharma, Advocates for R-1,
R-2, R-4, R-5 & R-6.
Mr. TVS Raghavendra Sreyas with
Mr. Siddharth Vasudev Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJAS KARIA

Signature Not Verified

Signed By: NEELAM
SHARMA
Signing Date: 01.10.2026
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JUDGMENT

TEJAS KARIA, J

CM APPL. 30522/2026

1. The Present Petition has been filed *inter alia* challenging the constitutional validity of Regulation 8(1) of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 (“**2022 Regulations**”); the *Suo Motu* Orders dated 26.12.2022, 06.02.2023 and 09.05.2024 issued thereunder by Respondent No. 3, Central Electricity Regulatory Commission (“**CERC**”); and the consequential Deviation Settlement Mechanism (“**DSM**”) demands raised / to be raised by Respondent No. 8, Andhra Pradesh State Load Despatch Centre (“**APSLDC**”) on the Petitioners.

2. The present Application has been filed by Petitioner Nos. 2 and 3 (“**Applicants**”) under Section 151 of the Code of Civil Procedure, 1908 seeking directions for compliance with interim orders dated 29.04.2025 and 23.05.2025 (“**Interim Orders**”), whereby APSLDC was directed to not take any coercive action. It is Applicants’ case that despite the Interim Orders, APSLDC is taking a coercive action of withholding No Objection Certificate (“**NOC**”) / Standing Clearance for open access, preventing the Applicants from evacuating power from their respective Wind Power Projects.

3. It the case of the Applicants that despite operation of the Interim Order dated 29.04.2025, on 16.05.2025, APSLDC/APTRANSCO, the parent organisation of APSLDC, directed the Applicants to pay the outstanding



DSM demands as a condition for obtaining NOCs for Short-Term Open Access. Consequently, the Applicants filed an application bearing CM APPL No. 31959 of 2025 before this Court seeking *ad-interim* stay on the email dated 16.05.2025 and directions to the Respondents to not terminate or withhold the NOC for supply of power through Short-Term Open Access, in terms of the Interim Order dated 29.04.2025.

4. Accordingly, this Court passed Interim Order dated 23.05.2025 in the present Petition, whereby APSLDC / APTRANSCO were directed to reconsider the email dated 16.05.2025 and to comply with the directions contained in the Interim Order dated 29.04.2025. Thereafter, from May 2025 onwards, APSLDC / APTRANSCO issued NOCs / Standing Clearances to the Applicants on a month-to-month basis for the full capacity of their respective Wind Projects.

5. In April 2026, the Applicants applied for the grant of Short-Term Open Access for the month of May 2026 on the National Open Access Registry (“**NOAR**”) portal.

6. *Vide* communication dated 28.04.2026, APSLDC directed the Applicants to make complete payment of the outstanding DSM amounts for processing of the application for grant of NOC / Standing Clearance stating that “*clear the DSM dues for processing the application in NOAR by 30/04/2026*”.

7. On 30.04.2026, APSLDC granted NOCs to the Applicants for a period of seven days in May 2026, namely, from 01.05.2026 to 07.05.2026, citing “*Persistent over-scheduling and significant under-injection by the Notices in violation of the schedule discipline obligations under the IEGC,*



2023 — Accumulation of unpaid statutory dues under the CERC (DSM) Regulations, 2022 / 2024 ...” as the reason therefor.

8. On 30.04.2026, APSLDC issued a show-cause notice (“**Show Cause Notice**”) to the Applicants, seeking recovery of the outstanding DSM dues and calling upon them to show cause as to why the NOCs should not be withheld on account of the alleged “*threat to Grid Security and non-payment of the entire DSM demands...*”. It further stated that “*Upon the constraint to grid security being demonstrably cured – by the clearance of the outstanding statutory dues set out in paragraph 5, by the demonstration of sustained schedule discipline going forward, and by such other corrective measures as APSLDC may direct – the standing clearance shall be revived at the earliest ...*”.

9. On 07.05.2026, APSLDC issued NOCs to the Applicants for the period from 08.05.2026 to 31.05.2026 for part of the capacity of the Applicants’ projects. APSLDC further stated that it had no objection to issuing NOCs for the full capacity, provided that the Applicants furnished an undertaking that generation would conform to the schedule and would not involve abnormal or continuous under-injection.

10. On 14.05.2026, the Applicants furnished the requisite undertaking (“**Undertaking**”) to APSLDC.

11. From 01.06.2026, APSLDC continued to issue NOCs to the Applicants on a weekly basis for part of the capacity of the Applicants’ Wind Projects (“**Wind Projects**”). Aggrieved by the continued restriction, the Applicants filed the present Petition *inter alia* seeking directions to: -



- a. APSLDC to not withhold or revoke the NOC / Standing Clearance for grant of Open Access for May 2026 and subsequent months in terms of the Interim Orders dated 29.04.2025 and 23.05.2025 passed by this Court;
- b. Respondent No. 7, Grid Controller of India to ensure that uninterrupted access is granted to the Applicants irrespective of APSLDC's instructions; and
- c. APSLDC to process and grant NOC / Standing Clearance for Open Access to the Applicants for the entire month of May 2026 and subsequent months, without insisting on complete payment of DSM amounts.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

12. Learned Senior Counsel made the following submissions on behalf of the Applicants:

- 12.1. The Applicants are protected against coercive action under the 2022 and 2024 Regulations. Accordingly, APSLDC cannot recover the DSM demands from them during the subsistence of the Interim Orders. Despite the Interim Orders, APSLDC has, since May 2026, withheld NOCs / Standing Clearances for the full capacity of the Wind Projects solely due to non-payment of DSM demands.
- 12.2. NOCs are sought for the projects' full installed capacity. Daily schedules, however, are submitted by the Applicants and confirmed by APSLDC based on the day's forecast; the scheduled



quantum may be equal to or lower than, but cannot exceed, the NOC quantum.

- 12.3. APSLDC's initial communication dated 28.04.2026 did not refer to grid security. That ground was raised for the first time in the Show Cause Notice, without supporting evidence; the Show Cause Notice further stated that grid security concerns could be cured by payment of DSM dues, upon which NOCs would be restored.
- 12.4. Despite the Undertaking, APSLDC did not issue NOCs for the full capacity. It must therefore establish the independent and continuing grid-security constraint that persisted despite compliance with its stipulated condition.
- 12.5. Since 01.06.2026, APSLDC has issued weekly NOCs only for part of the Wind Projects' capacity, without reasons. Unlike the May 2026 NOCs, those issued from June 2026 do not cite "*Grid Security*" as the basis for withholding full-capacity NOCs.
- 12.6. Any grid-security restriction must be supported by technical data and an operational constraint linked to its quantum and duration. APSLDC's letter dated 09.07.2026, tendered at the hearing on 03.09.2026, merely reiterates the Show Cause Notice and gives no reason for withholding NOCs from June 2026.
- 12.7. The record shows that APSLDC restricted the Applicants' NOCs for non-payment of DSM dues; grid security was invoked only subsequently. APSLDC's own Show Cause Notice and the May 2026 NOCs confirm this basis. Payment of DSM dues could not,



in any event, restore frequency, voltage, transmission margins, or any other operational-security parameter.

12.8. Restricting NOCs to part capacity during the peak wind season causes irreversible loss of renewable generation by preventing the Applicants from scheduling higher generation when available. Apart from violating the Interim Orders, APSLDC's action is contrary to:

- a. 'Must-Run' status granted to Wind Projects under Electricity (Promotion of Generation from Renewable Energy from Renewable Energy) Rules, 2021 and Regulation 5.2(u) and 6.5(11) of Grid Code 2010.
- b. 1st and 5th Proviso to Section 42(2) of the Electricity Act, 2003 which provides that non-discriminatory Open Access is to be mandatorily provided to a generating company and no extraneous conditions can be imposed for grant of Open Access.

12.9. The learned Appellate Tribunal for Electricity ("APTEL") in its judgment dated 11.09.2025 passed in ***Tanot Wind Power Venture Pvt. Ltd. v. RERC & Ors.***, Appeal No. 108 of 2018 - has held that curtailment of renewable generation shall not be considered as meant for grid security if generation is being curtailed under the following conditions:

- a. System Frequency is in the band of 49.90Hz-50.05Hz; and
- b. Voltage is between 380kV-420kV for 400kV systems & 198kV- 45kV for 220kV systems.



- 12.10. Under or over-injection, being the difference between actual generation and the day-ahead schedule, is inherent in wind generation due to variations in wind speed and velocity. The DSM framework expressly contemplates and commercially settles deviations between scheduled and actual injection. A deviation, by itself, does not establish a grid-security event; were every deviation to warrant curtailment, the DSM Regulations would serve no purpose.
- 12.11. In view of the definition of grid security in Regulation 3(1)(66) of the IEGC 2023 and APTEL's directions in **Tanot** (*supra*), APSLDC was required to show that grid frequency or voltage fell outside the prescribed limits from May 2026. No such particulars have been furnished.
- 12.12. Only the Applicants' full-capacity NOCs have been withheld. No other generator connected to the same sub-station or nearby has been curtailed on the asserted ground of grid security. A genuine grid-security constraint would ordinarily affect other projects as well.
- 12.13. APSLDC has not disclosed any project, sub-station, or network specific operational basis for restricting only the Applicants' NOCs. The continuing restriction is therefore arbitrary and unsupported by any demonstrated grid-security concern.
- 12.14. Historical deviations from June to December 2025 cannot establish a continuing grid-security threat from May 2026. APSLDC must identify a contemporaneous operational constraint,



the security limit breached, and how the restricted NOC quantum addresses it; absent such evidence, reliance on historical data is arbitrary and technically unsupported.

- 12.15. APSLDC's Reply shows that, from July to December 2025, the Applicants over-injected in 20–30% of the time blocks during the period in which intentional over-scheduling and under-injection are alleged. This data contradicts that allegation.
- 12.16. APSLDC cannot invoke the CERC (General Network Access) Regulations, 2022 ("**GNA Regulations**") to circumvent the Interim Orders. NOCs issued from June 2026 do not cite "*grid security*", indicating that full-capacity NOCs were withheld for non-payment of DSM dues, contrary to the Interim Orders.
- 12.17. Deviations are neither deliberate nor avoidable in variable wind generation, particularly where accurate day-ahead forecasting is difficult and generators selling power on exchanges cannot revise their schedules.
- 12.18. APSLDC's historical deviation figures are inflated and inconsistent with Regulation 6(2) of the CERC DSM Regulations. Applying the prescribed formula yields deviations of only 15–17%, while wind generators incur no penalty up to 15%. Ordinary over-scheduling or under-injection does not threaten grid security, and APSLDC has produced no frequency logs, voltage profiles, grid reports, or other technical material required under **Tanot** (*supra*). Past deviations cannot justify continuing commercial curtailment on grounds of grid security.



- 12.19. The GNA Regulations and the Temporary-General Network Access (“T-GNA”) Procedure do not allow NOCs to be withheld or reduced solely because of past under-injection. Regulation 31.5 of the GNA Regulations and Clause 5(t) of the Revised T-GNA Procedure allow Standing Clearance to be reduced only when there are transmission-system constraints or when required for grid security. Past deviations must therefore be connected to a current operational constraint.
- 12.20. Clause 5(t) of the Revised T-GNA Procedure allows curtailment for grid security. APSLDC’s reliance on Clause 12(a) shows that the curtailment is linked instead to unpaid DSM dues. DSM charges are penalties and are not covered by Clause 12(a). In any event, only the Regional Load Despatch Centre, and not APSLDC, may exercise that power.
- 12.21. An NOC is not forecast-based. The schedule is the generator’s day-ahead estimate and remains within the NOC quantum; deviation is the difference between scheduled and actual generation and is settled under the DSM framework. As wind generation is variable, deviations are unavoidable, and the Impugned Regulations exempt deviations up to 15%. APSLDC’s withholding of NOC / Standing Clearance for May 2026 and subsequent months is therefore inconsistent with the scheduling and DSM framework.

**SUBMISSIONS ON BEHALF OF APSLDC:**

13. The learned Counsel for the APSLDC made the following submissions on behalf of APSLDC:

- 13.1. The impugned Demand Notices dated 09.04.2025 calculate deviation thresholds and penalties under the 2022 Regulations, as adopted in the APERC Regulations, 2017 by APERC's order dated 21.09.2023. APSLDC's authority to issue the Demand Notices therefore arises from the APERC Regulations, 2017, and not from any CERC regulation.
- 13.2. The Demand Notices relate to the period from 27.05.2024 to 15.09.2024. The 2022 Regulations were repealed on 16.09.2024, when the 2024 Regulations came into force. Since then, APSLDC has computed deviation penalties and energy charges under the 2024 Regulations, pursuant to APERC's order dated 21.09.2023. This is evident from later demands raised against the Petitioners, which remain unpaid, and from payments collected from other generators.
- 13.3. The present Petition challenges only Regulation 8(1) of the 2022 Regulations, which ceased to operate on 16.09.2024. It does not challenge the APERC Regulations, 2017 or APERC's order dated 21.09.2023, which remain the source of APSLDC's authority. Therefore, no interim relief can extend to deviation penalties or energy charges raised after September 2024. Even if full-quantum T-GNA NOCs were withheld to secure payment of DSM dues, current dues do not arise under the 2022 Regulations and fall outside the present Petition.



- 13.4. The Applicants are intra-State entities in Andhra Pradesh, connected to the State grid and governed by the APERC Regulations, 2017, as amended. They are therefore subject to APSLDC's powers concerning despatch and deviation settlement. The adoption of CERC thresholds and penalties into the APERC Regulations does not confer jurisdiction on CERC. Accordingly, this Court lacks territorial jurisdiction, as no material cause of action arose within Delhi and the Petition contains no proper pleading to that effect. Reliance was placed on ***State of Goa v. Summit Online***, (2023) 7 SCC 791.
- 13.5. The absence of material pleadings is significant. In W.P.(C) No. 16060 of 2022, which also challenged the 2022 Regulations, this Court observed on 08.01.2025 that the petition *prima facie* “*did not survive*” because the Regulations were “*no longer in operation*”. Neither APSLDC nor any State authority or regulatory commission was a party to that case. Soon thereafter, the same counsel filed the present Petition, adding APSLDC as a party and obtaining the Interim Orders.
- 13.6. Delegated legislation may be stayed only if it is manifestly arbitrary or unconstitutional. The 2022 Regulations, the APERC Regulations, 2017, and APERC's order dated 21.09.2023 were issued after due consultation and consideration of the technical issues raised by the Petitioners. The required threshold for interim interference is therefore not met. Reliance was placed on ***Bhavesh v. Union of India***, (2000) 5 SCC 471.



- 13.7. The Petition does not challenge the T-GNA framework under the CERC GNA Regulations, the procedure framed under them, or the recovery of *energy* charges. The Applicants cannot avoid those charges by relying on the Interim Orders or seek relief beyond the Petition. Any dispute concerning APSLDC's regulation of NOC quantum lies before APERC under Section 86(1)(f) of the Electricity Act, 2003. In view of this statutory remedy, writ jurisdiction should not be invoked. Reliance was placed on ***Jaipur Vidyut v. M.B. Power***, (2024) 8 SCC 513.
- 13.8. Any writ challenge to APERC's regulation of NOC quantum would lie before the Andhra Pradesh High Court, which exercises supervisory jurisdiction over APERC under Article 227 of the Constitution. Therefore, relief of the nature sought in this Application cannot be granted by this Court.
- 13.9. The Application concerns revocation or withdrawal of NOCs for non-payment of DSM dues under Regulation 12(a) of the Procedure for Grant of NOC, 2023. The Applicants now seek full-quantum NOCs, which would restrict APSLDC's power under Regulation 5(t) to regulate the quantum and duration of NOCs because of transmission constraints or grid-security concerns. The scope of interim relief cannot be expanded beyond the prayers in the Application.
- 13.10. Without prejudice to these submissions, APSLDC's regulation of the Applicants' NOC quantum is not intended to compel payment



of DSM dues in breach of the Interim Orders. Despite the Undertaking, the Applicants continued to seek NOCs for full capacity, enabling schedules beyond reasonable generation estimates. The Undertaking was therefore ineffective.

13.11. APSLDC explained the basis for regulating the duration and quantum of T-GNA NOCs in its detailed letter dated 09.07.2026. Despite having an opportunity, the Applicants did not address that letter in their Rejoinder.

13.12. The letter dated 09.07.2026 states that APSLDC regulated the duration and quantum of the Applicants' T-GNA NOCs because of persistent under-injection, which increased after the Interim Orders. APSLDC states that these measures were necessary to address repeated schedule deviations, protect grid security, and reduce stress on the transmission system.

13.13. The Interim Orders do not affect APSLDC's separate duty to maintain grid discipline. APSLDC may therefore regulate the quantum and duration of NOCs under the T-GNA framework to address the Applicants' deviations.

13.14. Full-capacity NOCs for an entire month allow the Applicants to schedule higher day-ahead energy and receive payment for the scheduled quantum, even if actual injection is lower. APDISCOMs must then procure the shortfall in the short-term market. Under the proviso to Regulation 8(1) of the 2022 Regulations, APSLDC may recover these energy charges from the Applicants. However, relying on the Impugned Orders, the



Applicants have not paid those charges despite receiving payment for the scheduled energy.

13.15. The Applicants have not established any ground for relief, and the Application should be dismissed. Since the 2022 Regulations ceased to operate on 16.09.2024, the Interim Order should be clarified to apply only to deviation penalties raised up to that date and not to energy charges arising from any actual shortfall between delivered energy and the Applicants' Day-ahead schedules.

ANALYSIS AND FINDINGS

14. We have considered the submissions made on behalf of the Parties and perused the material placed on record.

15. The principal issue arising for consideration in the present Application is whether, in view of the Interim Orders, APSLDC is entitled to withhold or restrict the grant of NOC / Standing Clearance to the Applicants for Open Access on account of non-payment of the DSM dues covered by the Interim Orders.

16. By the Interim Orders, this Court directed that no coercive steps be taken pursuant to the 2022 Regulations until the next date of hearing. Thereafter, APSLDC, by email dated 16.05.2025, demanded payment of the outstanding amount and the production of a No Dues Certificate, failing which the NOC for Short-Term Open Access was proposed to be terminated. Upon being approached by the Petitioners, this Court, by order dated 23.05.2025, directed APSLDC to reconsider the email dated 16.05.2025 and comply with the Interim Order dated 29.04.2025.



17. Thus, the Interim Orders protect the Applicants against coercive action pursuant to the 2022 Regulations. The order dated 23.05.2025 further clarifies that APSLDC cannot, contrary to that protection, make payment of the DSM dues covered by the Interim Orders a condition for the continuation of the NOC / Standing Clearance.

18. In the present case, APSLDC's communication dated 28.04.2026 expressly required the Applicants to clear the DSM dues before their applications for Open Access could be processed. Thereafter, while granting NOCs only for the period from 01.05.2026 to 07.05.2026, APSLDC referred, *inter alia*, to the accumulation of unpaid statutory dues under the 2022 Regulations / 2024 Regulations. The Show Cause Notice likewise referred to the non-payment of DSM demands and stated that the Standing Clearance would be revived upon, *inter alia*, clearance of the outstanding statutory dues.

19. These communications clearly show that APSLDC restricted the Applicants' NOC / Standing Clearance because the DSM dues had not been paid. While the Interim Orders remain in force, APSLDC cannot make demand of those dues a condition precedent for granting or continuing the NOC / Standing Clearance. Doing so would indirectly recover the dues despite Interim Orders.

20. However, the Interim Orders do not require APSLDC to grant NOC / Standing Clearance for the Wind Projects' full installed capacity or for any fixed period. The Interim Order dated 29.04.2025 only protects the Applicants from coercive action under the 2022 Regulations, and the Interim Order dated 23.05.2025 requires APSLDC to respect that protection.



21. APSLDC has sought to justify the restriction on the ground that over-scheduling and under-injection adversely affected grid security. The Applicants disputed this contention and submitted that grid security was invoked only as an afterthought. It was further submitted by the Applicants that, despite the furnishing of the Undertaking and the omission of any reference to grid security in the NOCs issued from June 2026 onwards, APSLDC continued to issue NOCs only for part of the capacity.

22. For the purposes of adjudicating the present Application, it is not necessary to determine whether the material relied upon by APSLDC establishes a continuing threat to grid security and whether NOCs ought to be granted for the full capacity and for entire month. The scope of the present Application is limited to ensuring compliance with the Interim Orders.

23. The Interim Orders cannot, however, be construed as requiring APSLDC to grant NOCs for any specified capacity or duration in case of existence of other permissible grounds under the applicable regulatory framework, provided that the NOCs / Standing Clearances are not withheld, revoked, or restricted on account of unpaid DSM dues covered by the Interim Orders.

24. APSLDC shall remain at liberty to regulate the grant, capacity, or duration of the NOC / Standing Clearance on any independent ground permissible under the applicable regulations, provided that such action is not founded upon the non-payment of those DSM dues. Likewise, the Applicants are at liberty to avail any such legal remedies as may be available to them under the applicable regulations in respect of any grievance relating to the capacity or duration of the NOC / Standing Clearance.



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25. In view of the foregoing, the Applicants' prayer for the grant of NOC / Standing Clearance for the full capacity of their Wind Projects for the entire month cannot be granted in the present Application. APSLDC is, however, directed to ensure strict compliance with the Interim Orders dated 29.04.2025 and 23.05.2025 by not withholding, revoking or restricting the NOCs / Standing Clearances on account of unpaid DSM dues covered by the Interim Orders during their subsistence.

26. With the aforesaid observations and directions, the present Application stands disposed of.

TEJAS KARIA, J

DEVENDRA KUMAR UPADHYAYA, CJ

SEPTEMBER 30, 2026

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