

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

OP NO. 02 OF 2016

Dated: 01st MARCH, 2017.

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:-

**SUGAR MILLS ASSOCIATION)
MADHYA PRADESH)
Flamingo – 44, Aakriti Eco City,)
E-8 Extension, Bhopal-462 026.) ... **Petitioner(s)****

AND

**MADHYA PRADESH ELECTRICITY)
REGULATORY COMMISSION)
5th Floor, Metro Plaza,)
E-5, Bittan Market,)
Bhopal-462 023.) ... **Respondent(s)****

Counsel for the Petitioner (s) : Mr. M.G.Ramachandran
Mrs. Swapna Seshadri

Counsel for the Respondent(s): Mr. Venkatesh
Mr. Varun Singh
Mr. Pratyush Singh
Mr. Shashank Khurana
Ms. Natabrata Bhattacharya

ORDER

1. The Petitioner is an association of Sugar Mills in the State of Madhya Pradesh. Respondent No.1 is the Madhya Pradesh

Electricity Regulatory Commission (“**the State Commission**”). In this petition filed under Section 121 read with sub-section(6) of Section 111 of the Electricity Act 2003 (“**the said Act**”) the Petitioner has prayed *inter alia* that the State Commission be directed to pass the tariff order and decide the tariff for bagasse based co-generation projects for the period from 01/04/2016.

2. The grievance of the Petitioner could be shortly stated. Admittedly, the State Commission has passed tariff order dated 01/04/2013 determining tariff for co-generation units to be commissioned in the State of Madhya Pradesh for supply to distribution licensees. The said order was applicable to all new bagasse based co-generation plants in the State of Madhya Pradesh commissioned on or after 01/04/2013 till 31/03/2016.

The tariff order, *inter alia* provides as under:

“4.1 This tariff Order will be applicable to all new bagasee based cogeneration plants in Madhya Pradesh commissioned on or after 01.04.2013 for the sale of electricity to the distribution licensees within the state. This order also specifies the terms & conditions (other than tariff) for captive user or for sale to third party.

.....

5.1 The control period to which this order shall apply shall start from 01.04.2013 and will end on 31.03.2016 (i.e. end of FY 2015-16). The tariff decided

in this order shall apply to all projects which come up during the above mentioned control period and tariff determined shall remain valid for the project life of 20 years.”

3. According to the Petitioner since the control period of order dated 01/04/2013 was ending on 31/03/2016, the State Commission was required to undertake the process of fresh determination of tariff for the period from 01/04/2016. However, the State Commission, only after the expiry of the control period, in April, 2016 initiated the process for fresh tariff determination.

4. Since the State Commission was in the process of determination of fresh tariff and there cannot be any vacuum in the interregnum, the State Commission issued an order on 18/04/2016. It reads as under:

“The Commission had passed tariff order on 01.04.2013 for procurement of power from Bagasse based cogeneration plants in Madhya Pradesh for the control period upto 31.03.2016. Since then there has not been much investment in this sector in the state.

2. Looking to the new developments in the aforesaid field, the Commission decides to initiate the process for determination of tariff for the next control period and to extend the existing control period till the new tariff is issued. All other terms and conditions of the tariff order dated 01.04.2013 shall remain unchanged.”

5. The State Commission held a public hearing on 24/05/2016. The Petitioner filed its comments on various aspects of the Approach paper circulated by the State Commission.

6. According to the Petitioner since the tariff order has not been issued despite lapse of considerable period, the Petitioner by letter dated 07/10/2016 requested the State Commission to issue the tariff order at the earliest. However, the State Commission by communication dated 13/10/2016 informed the Petitioner that since the tariff order dated 01/04/2013 has been continued till determination of the fresh tariff, there ought not to be any difficulty for the project developers.

7. Dissatisfied with this approach of the State Commission the Petitioner has approached this Tribunal by way of this petition.

8. We have heard Mr. Ramachandran, learned counsel appearing for the Petitioner at some length. Relying on the judgment of this Tribunal in **Indian Wind Energy Association v. Andhra Pradesh Electricity Regulatory Commission &**

Ors. in O.P. Nos.1, 2 and 4 of 2013 dated 20/04/2015,

counsel submitted that the State Commission has the mandatory obligation to determine preferential tariffs for renewable energy generators and ensure that the distribution licensees fulfill the renewable purchase obligation. The State Commission has failed to carry out this mandatory obligation. Counsel submitted that the delay in the tariff determination for the new control period from 01/04/2016 is adversely affecting the co-generation project developers who are in the process of construction and who do not have tariff based on the present day costs. Counsel submitted that the Petitioner's members who are in the process of commissioning bagasse based cogeneration stations would be left stranded with unviable tariff of the year 2013, while the distribution licensees will fall short of the renewable purchase obligation. Counsel drew our attention to Section 64(3) of the said Act which requires the Appropriate Commission to issue a tariff order within 120 days from the date of application for determination of tariff. Counsel submitted that in this case the State Commission has failed to carry out this statutory function. Counsel submitted that it is therefore, necessary for this Tribunal

to issue appropriate directions to the State Commission to perform its statutory function.

9. Mr. Venkatesh learned counsel appearing for the State Commission submitted that the Petitioner has not challenged order dated 18/04/2016 passed by the State Commission. That order has assumed finality. Counsel further submitted that since new regulations are being issued the State Commission has not yet passed the tariff order. Counsel submitted that in the circumstances the petition deserves to be dismissed.

10. In **Indian Wind Energy Association**, the Associations of Wind Energy Generators, Developers and Manufacturers of Wind Turbine and Association of Developers of Small Hydro Projects had sought directions from this Tribunal under Section 121 of the said Act regarding compliance of Renewable Purchase Obligations by the distribution licensees and other obligated entities. Having regard to the relevant provisions of the said Act which require the State Commissions to promote cogeneration and generation of electricity from renewable sources of energy, the Tariff Policy and the relevant judgments of this Tribunal, this Tribunal issued

necessary directions under Section 121 of the said Act. The following direction is relevant for the present case.

“(i) The State Commission shall decide the RPO targets before the commencement of the Multi Year Tariff period to give adequate time to the distribution licensees to plan and arrange procurement of renewable energy sources and enter into PPAs with the renewable energy project developers. The Preferential Tariff for procurement of renewable energy by the Distribution Licensee for a financial year should also be in place before the commencement of the financial year and no vacuum should be left between the end of control period for the previous tariff and the beginning of control period of the new tariff.”

11. It is pertinent to note that despite the above direction of this Tribunal, even after the expiry of the control period of three years, the State Commission has not passed the new tariff order. The tariff order dated 01/04/2013 was applicable to all new bagasse based cogeneration plants in the State of Madhya Pradesh commissioned on or after 01/04/2013 till 31/03/2016. Since the State Commission was in the process of determination of fresh tariff and there cannot be any vacuum in the interregnum, the State Commission issued an order on 18/04/2016 continuing the existing tariff till the new tariff order is passed. Public hearing was held on 24/05/2016. However, till date the State Commission has not determined the tariff for the subsequent

control period. No acceptable explanation is offered for this delay. In this connection reliance placed on Section 64(3) of the said Act is apt.

12. Having heard the learned counsel for the parties in the peculiar factual matrix of this case we are of the opinion that it is necessary to issue appropriate direction to the State Commission under Section 121 of the said Act. Hence, the following order:

“As per order dated 18/04/2016 passed by the State Commission, it has initiated the process for determination of tariff for the next control period. The State Commission is directed to complete the said process in the light of the said order and determine the tariff as expeditiously as possible and at any rate within a period of two months from the date of receipt of this order by it.”

13. The Petition is disposed of in the aforestated terms.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]