

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

APPEAL NO 327 OF 2017

Dated: 18th April, 2018

**Present: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF:

RDM Care (India) Pvt. Ltd.
2/12, West Patel Nagar
New Delhi – 110 008
Gujarat

....Appellant

VERSUS

1. Madhya Pradesh Electricity Regulatory Commission
5th Floor, Metro Plaza
E-5, Arera Colony, Bittan Market
Bhopal – 462 016

2. M.P. Power Management Company Ltd.
Shakti Bhawan, Vidyut Nagar
Jabalpur – 482 008

.....Respondents

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Parichita Choudhury
Ms. Neha Garg
Mr. Sandeep Rajpurohit

Counsel for the Respondent(s): Mr. C.K. Rai
Mr. Umesh Prasad
Mr. Mohit Rai
Mr. Paramhans for R-1

Mr. Manoj Dubey
Mr. Sanjay Khare for R-2

J U D G M E N T

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The present Appeal has been filed under Section 111 of the Electricity Act, 2003 against Order dated 05/02/2015 passed by the Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as the '**State Commission**') determining the tariff for procurement of power from biogas based power projects in the State of Madhya Pradesh. The Appellant is the only biogas based power plant in the State of Madhya Pradesh and had also moved Review Petition No. 11/2015 before the State Commission praying for review of the Order dated 05/02/2015. The State Commission has dismissed the review vide Order dated 30/04/2015. Aggrieved by the decision of the State Commission, the Appellant has preferred the instant Appeal.

2. BACKGROUND AND FACTS OF THE CASE

2.1 The Appellant M/s. RDM Care (India) Pvt. Limited is the first and only biogas based generating station in the State of Madhya Pradesh. The Appellant is supplying power to Respondent No. 2 – M.P. Power Management Company Ltd. from its 1.2 MW Biogas based electricity generation plant at Village Pariyat, District Jabalpur.

2.2 The Power Purchase Agreement (PPA) for sale of power was executed on 05/04/2010 at the tariff terms and conditions as applicable to Biomass Based Power Plant and indicated in Tariff Order 07/08/2007 of the State Commission as amended from time to time. This was because there was no tariff determined for biogas plants and the biomass rates itself was being applied.

2.3 Subsequently, the State Commission issued a new tariff order, dated 02/03/2012, once again determining the tariff for procurement of power from Biomass Plants only. The State Commission also re-determined the variable tariff/fuel costs for existing projects. A supplementary power purchase agreement for sale of power was executed on 06/06/2012 in line with Para 9.1 of the tariff order dated 02/03/2012 and the Respondent No. 2 started paying the Appellant on this basis.

2.4 However, the tariff Order dated 02/03/2012 itself got challenged before this Hon'ble Tribunal and was set aside vide judgment dated 18/02/2013, directing the State Commission to re-determine the tariff and pass consequential orders. The tariff order dated 02/03/2012 was not challenged by the Appellant but only by the biomass generating companies.

2.5 Thereafter, the State Commission passed the remand order dated 03/05/2013 pursuant to which the benefits given to the Appellant

under the earlier Order dated 02/03/2012 by the Respondent No. 2 were taken away. Both the State Commission as well as this Hon'ble Tribunal upheld this position holding that the tariff order dated 02/03/2012 stood superseded by the Order dated 03/05/2013 and no benefit could come to the Appellant under the Order dated 02/03/2012.

2.6 Due to the above dichotomy of tariff for projects commissioned under the 07/08/2007 Order and the applicability of revised variable tariff as per the Order dated 02/03/2012, the Appellant on 10/03/2015 filed Petition No. 07/2014 before the State Commission seeking project specific tariff determination. The other difficulty of the Appellant was that there was no tariff determined for biogas based projects. Copy of Petition 07/2014 filed by the Appellant before the State Commission.

2.7 The State Commission heard Petition No. 07/2014 on 22/04/2015 and disposed of the matter at the admission stage itself deciding as under –

“2.The petitioner, M/s RDM Care (India) Pvt. Ltd. Has filed this petition for determination of project specific tariff for sale of power to the M.P. Power Management Co. Ltd./ M.P. Poorv Keshetra Vidyut Vitaran Co. Ltd. from its 1.2 MW biogas power plant.

3. *The case was listed for motion hearing on 22.04.2014.*

4. *During the hearing, the petitioner reiterated the contents of the petition.*

5. *The Commission disposes of this petition with the direction that necessary action for determination of tariff for such projects be initiated as per the procedure laid down.”*

2.8 Pursuant to the above, the State Commission issued an approach paper on fixation of norms for determination of tariff for procurement of power from biogas based power projects in November 2014.

2.9 The Appellant filed its submissions on the approach paper and clearly pointed out that the capital cost, fuel cost, fuel ratio, assumed income from manure, CDM benefit and working capital aspects proposed by the State Commission in the approach paper were not adequate and the reasons there for.

2.10 The State Commission passed the tariff order dated 05/02/2015 applying it to all the new biogas based power generation projects as well as the tariff for existing biogas based projects in the State, which, in the present case, is only the one set up by the Appellant. In the Order dated 05/02/2015, the State Commission did not properly deal with the submissions of the Appellant and reiterated the approach paper on several issues despite the Appellant pointing out that the same was not correct and feasible.

2.11 In view of the above, the Appellant moved review petition No. 11/2015 before the State Commission seeking review of the order dated 05/02/2015 on the following issues –

i. Capital cost

- ii. Ratio of fuel mix assumed in the Order
- iii. Differential cost of fuel between the old and the new projects
- iv. Assumed income from sale of manure

2.12 The State Commission has dismissed the Review Petition vide Order dated 30/04/2015 holding that there is no error apparent on the fact of record.

2.13 Aggrieved by the Order dated 05/02/2015, the Appellant has filed the present appeal on the following facts in issue, questions of law and legal grounds.

3. **QUESTIONS OF LAW**

The following questions of law arise in the present appeal:

- A.** When there is only one operating biogas plant in the State which has given all its figures to the State Commission, whether the State Commission can ignore the same and fix a generic tariff which is not at all cost reflective?
- B.** Whether the State Commission can ignore that the Appellant being the first and only biogas based generator in the State had to incur a capital cost of Rs. 12.28 crores/MW which has been verified and approved by the Ministry of New and Renewable Energy as well ?
- C.** Whether the State Commission can fix arbitrary / differential fuel cost for old and new plants when fuel is to be procured even by the old plants at the same costs as the new plants and there is parity qua fuel procurement ?
- D.** Whether, the State Commission can force the Appellant to generate on 100 % cow dung when the plant can technically operate only at 90% cow dung and 10% fruit and vegetable waste?
- E.** Whether the State Commission is correct in fixing assumed revenue of Rs. 1.5 per Kg for the manure when practically

there is no buyer and on the contrary, the Appellant has to spend money to dispose of the manure?

4. Reliefs Sought:

- a)** Allow the appeal and set aside the order dated 05/02/2015 passed by the State Commission to the extent challenged in the present appeal;
- b)** Direct the State Commission to re-fix and re-determine the tariff of the Appellant in a cost reflective and realistic manner;
- c)** Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

5. The gist of written submissions made by Mr. Anand K. Ganesan, the learned counsel for the Appellant, RDM Care (India) Private Ltd. are as under:-

5.1 The issues in the present Appeal are as under:

- A.** Capital cost allowed at Rs.8.5 Crores/MW instead of Rs. 10.23 crores/MW net of subsidy incurred by the Appellant aggregating to Rs.12.28 Crores for the 1.2 MW plant;
- B.** The cost of fuel for old plants taken at Rs.145/MT as against Rs. 175/MT for new plants;
- C.** Fuel mix of 90% cow dung and 10% fruit and vegetable waste rejected which is necessary for operation of the plant;
- D.** Assumption of revenue of Rs.1.5 per kg with 5% escalation for the residuary by-product generation to be sold as manure by the Appellant;

5.2 Under the Electricity Act, all renewable energy generators are required to be promoted. This is in terms of Section 61(h) and Section 86(1)(e) of the Electricity Act. Further, the 1.20 MW biogas generating station of the Appellant is among the first of its kind in India. The generating station is a waste to energy generating

station, which not only generates and supplies electricity using renewable energy generator, but also ensures management and disposal of waste, which is a prime requirement for our country.

5.3 Waste management and disposal is one of the primary problems which our country faces and is a prime focus area of the Government of India. For this reason, the waste to energy plants has been given a much higher preferential treatment under the Electricity Act even amongst the renewable energy generators. In this regard, the National Tariff Policy, 2016, inter-alia provides as under:

6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:

(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.

.....

(ii) Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff

determined by the Appropriate Commission under Section 62 of the Act.

- 5.4 In terms of the above, even though renewable generators are now relegated to competitive bidding process and also purchase only to the extent of Renewable Purchase Obligation, with regard to waste to energy generators, there is not only an obligation on the distribution licensees to purchase the electricity, but also at the tariff determined under Section 62 of the Electricity Act, 2003.
- 5.5 In fact, the Appellant had approached the State Commission for a project specific tariff determination. This was however disposed of by the State Commission by order dated 22.04.2014 holding that the tariff would be determined by following the procedure as per law.
- 5.6 However, the State Commission did not determine the project specific tariff for the Appellant, but only the generic tariff by the Impugned Order. The specific costs and expenses and other details of the Appellant have not at all been considered by the State Commission, even though the Appellant is the only biogas generating station in the State.
- 5.7 In the Impugned Order, the State Commission has not at all even considered the costs and expenses of the Appellant. The Impugned Order is passed based on assumptions and

presumptions, without any basis, evidence or material. In this regard, the following are relevant:

- (a) The State Commission has not examined the costs and expenses actually incurred and actually being incurred by the Appellant;
- (b) There are no other biogas generating stations in the State of Madhya Pradesh for reference of the costs and expenses;
- (c) The State Commission has referred to comments of stakeholders in a vague manner without any specifics. It is also not understandable as to who could be the stake-holders to provide details, when the only biogas generator is that of the Appellant.
- (d) The State Commission has not taken reference of the norms and parameters determined by the other Regulatory Commission including the Central Commission. In terms of Section 61(a), the norms and parameters of the Central Commission is one of the factors to be considered by the State Commission.

5.8 The State Commission has fixed the tariff of the Appellant's at Rs. 3.40 per unit which is extremely low and in no way covers the cost of the Appellant. The essential requirement in the State both for waste disposal and also for renewable energy generation is not being given a viable tariff. The Appellant which had already established the plant is suffering on account of an unviable tariff.

5.9 In fact, the Central Electricity Regulatory Commission has fixed the tariff from biogas generating stations at Rs. 7.40 per unit. Similarly, other regulatory authorities have also fixed much higher and cost

reflective tariff. The Appellant has even provided the details of such tariffs in its Appeal.

5.10 In the circumstances mentioned above, it is submitted that the impugned order is not a reasoned order, has not considered the relevant details and materials and is therefore liable to be set aside with directions to the State Commission for fresh decision considering the actual costs and expenses of the Appellant, the norms and parameters of the Central Commission and other Regulatory Commission and subject to the above such other factors that may be relevant.

5.11 The submissions of the Appellant on the specific issues are as under:

A. CAPITAL COST ALLOWED AT Rs.8.5 CRORES/MW INSTEAD OF RS. 10.23 CRORES/MW NET OF SUBSIDY INCURRED BY THE APPELLANT:-

5.12 The State Commission in the Impugned Order has not recorded any reason based on which the capital cost has been decided at Rs. 8.50 crore/MW.

5.13 The State Commission has failed to appreciate that the Appellant's biogas based generating station is the only generating station of its kind in the State of Madhya Pradesh. The same is being operated by the Appellant at a capital cost of Rs. 15.88 Crores. After taking into account the subsidy, the capital cost works out to Rs. 12.28

crores for the 1.2 MW biogas plant. This works out to Rs. 10.23 Crore/MW.

5.14 The State Commission has not even considered the actual capital cost incurred by the Appellant. For generating stations, the reference point is the actual capital cost subject to prudence check. However, the same has not been considered by the State Commission.

5.15 The State Commission in the Impugned Order has not even recorded the contentions that have apparently been placed by various stakeholders. There has been no explanation, analysis or discussion carried out by the State Commission in the Impugned Order. The State Commission has not even considered the material placed by the Appellant.

5.16 It is a settled principle of law that an order passed by a quasi-judicial body must be a speaking order and must contain the reasons based on which the decision has been taken. This principle of law has been upheld by the Hon'ble Supreme Court of India in an array of judgments, some of which have been mentioned hereunder:

(a) **Rama Varma Bharathan Thampuram v State of Kerala &Ors.**
(1979) 4 SCC 782

(b) *Mohinder Singh & Anr.v State of Haryana &Ors. [1991 Supp. (2) SCC 207]*

(c) *Vasant D. Bhavsar v Bar Council of India &Ors.(1999) 1 SCC 45*

(d) *Mohinder Singh gill & Anr. v Chief Election Commissioner, New Delhi &Ors.*

5.17 The Appellant's project is the only project of its kind in the State of Madhya Pradesh. The State Commission has failed to appreciate that Section 62 of the Electricity Act, 2003 envisages the determination of tariff for sale of power by a generating company to a distribution licensee. In cases where there are multiple projects, the State Commission follows the approach of giving a generic tariff instead of a project specific tariff. However, when there is only one generating station, as is in the case of the Appellant, it is incumbent upon the State Commission to fix the capital cost and other parameters in a proper and cost reflective manner so that the Appellant is able to recover its due tariff.

5.18 The Appellant's plant is based on an important technology. The biogas based generating plant is a clean source of energy, which has the capacity to contribute towards the reduction of greenhouse gases in the atmosphere. It converts waste into energy and thereby helps in waste management. Therefore, in the absence of

a proper, well-reasoned tariff provision it is difficult for this technology to grow.

5.19 It is submitted that the above cost was an estimated cost prior to the plant being constructed. The actual capital cost is Rs. 15.88 Crores and after adjusting the subsidy received is Rs. 12.28 Crores. The State Commission is required to apply prudence check on this cost to see whether the cost incurred is prudent or not. This has not been considered by the State Commission and in the circumstances the impugned order is liable to be set aside.

B. THE COST OF FUEL FOR OLD PLANTS TAKEN AT Rs. 145/MT AS AGAINST Rs. 175/MT FOR NEW PLANTS:-

5.20 The ground of challenge was that the State Commission has granted only Rs. 145/MT to the existing plants, while granting Rs. 175/MT for new plants. However, during the course of arguments, the State Commission has clarified that the Appellant would also be entitled to Rs. 175/MT for the year 2015-16 and with 5% escalation thereafter. In view of the above clarification, this issue does not survive.

C. FUEL MIX OF 90% COW DUNG AND 10% FRUIT AND VEGETABLE WASTE REJECTED WHICH IS NECESSARY FOR OPERATION OF THE PLANT:-

5.21 The State Commission has erroneously held that since there is no dearth in the availability of cow dung, the Appellant must operate its plant with 100% cow dung without even considering the salient

features of the Appellant's plant and the technology on which it is based on.

5.22 It is submitted that the Appellant's plant is to be operated with 90% cow dung, and 10% waste from fruits and vegetables because this leads to the formation of methane which is used for running the plant. The availability of cow dung is not of concern here. The technology of the plant is to be looked into in this regard, which in the present matter is from Holland. The production of methane is necessary and that is why 10% of fruit and vegetable waste mix is to be used for the generation of electricity.

5.23 The Appellant in its DPR has provided the details of this technology which requires the plant to operate with a mix of 90% cow dung and 10% fruit and vegetable waste. The generating station is technically designed to run on the above basis and the Appellant needs to operate the generating station on a technically viable basis. Otherwise, the machinery is subject to damage.

5.24 The State Commission ought to consider the technical aspects of the plant as it is the regulatory authority. The State Commission is required to examine the special technical aspects of the plants of various generators, especially in the present scenario because the biogas technology is at its nascent stage in India. The Appellant bought the technology from Holland and set up its plant which is

the only one of its kind in the State of Madhya Pradesh. Examining the various aspects of the technology being used for one plant should not have been difficult for the State Commission.

5.25 As was suggested in the course of arguments by the State Commission, the Appellant has no difficulty to approach the State Commission to explain its difficulty to operate based on 100% cow dung and the technical basis of the generating station, which need to be considered by the State Commission and a reasoned order be passed by the State Commission.

D. ASSUMPTION OF REVENUE OF Rs.1.5 PER KG WITH 5% ESCALATION FOR THE MANURE USED FOR POWER GENERATION:-

5.26 The State Commission has simply assumed the amount of Rs. 1.5 per kg without any supporting basis or data. The State Commission has in a vague manner stated that it has considered the stakeholders' views, without specifying which stakeholder, what data, specific details etc. There is no reasoning in the impugned order.

5.27 In assuming the revenue generated from the sale of manure/ cow dung after its use, the State Commission has failed to realise that the said manure would be of diminished potency. The State Commission has not appreciated that there is absolutely no income which accrues to the Appellant by the sale of such manure.

- 5.28 The dried and used cow dung, which the State Commission is considering as manure, is actually burnt cow dung. It does not have the same potency as that of fresh animal waste. There are no buyers for such dried, burnt manure. In fact, the Appellant is incurring additional expenditure in terms of labour and cartage to clear the manure heap.
- 5.29 The State Commission has not appreciated that the generating station of the Appellant is in the outskirts of the city. There is no way that anyone who is looking to buy manure would come all the way to the Appellant's generating station to buy the burnt and used manure.
- 5.30 The State Commission has considered a very high amount of Rs. 1.5/- per kg of the residue. The fuel is itself being allowed only at Rs. 175/MT (1MT = 1000 kg), which is 17 paise per kg. The residue, which is burnt cow dung, is however considered to be selling at Rs. 1.5 per kg.
- 5.31 Even going by the fact that only 10% is considered as residue, it amounts to 15 paise/kg, whereas fuel cost is itself only 17 paise per kg. This is a very substantial amount in the tariff considered by the State Commission as revenue, which is not available to the Appellant.

5.32 The State Commission has contended that there is ample availability of cow dung in the State of Madhya Pradesh, and that it is even transported to other states. By this logic, anyone who is looking to buy manure would obviously buy the fresh manure from animal waste instead of buying the used and burnt one from the Appellant's generating station. In fact even the fresh manure would in all possibility cost less than the price ascertained by the State Commission for the used and burnt manure from the Appellant's plant.

5.33 The State Commission's assumption that the notional income of the Appellant will increase at 5% per annum which is similar to the cost of fuel escalation. As such, there are no takers for the cow dung used in the generation of electricity by the Appellant. The assumed escalation is not a reality in the present matter and therefore the State Commission ought to understand the same and make a well-reasoned decision in this regard.

6. **The gist of submissions made by Mr. C.K. Rai, Ld. Counsel for the Respondent No. 1, Madhya Pradesh Electricity Regulatory Commission are given below:-**

A. **CAPITAL COST ALLOWED AT RS. 8.5 CRORES / MW INSTEAD OF RS. 12.28 CRORES/ MW AND NET OF SUBSIDY AT RS. 10.23 CRORES/MW AS CLAIMED BY THE APPELLANT:-**

6.1 With respect to claim of Capital Cost of Rs. 10.23 Crores/MW net of subsidy claimed by the Appellant it is submitted that MNRE with

respect to project of the Appellant has accepted the capital cost of Rs. 13.13 Crores after due appraisal of the project including financial prudence check. The Appellant also paid sum of Rs. 51.03 Lakhs to the distribution licensee towards the cost of infrastructure. Therefore, the total expenditure works out to Rs. 13.64 crores (Rs. 13.13 Crores plus 51.03 Lakhs). After deducting the amount of subsidy received from the MNRE net amount works out to be Rs. 10.04 Crores for 1.2 MW project. Thus, per MW cost works out to be Rs.8.37 Crores. The Commission allowed capital cost of Rs. 8.50 Crores/MW, which is more than allowable capital cost.

6.2 The State Commission has duly examined the letter dated 30.11.2010 issued by Ministry of New and Renewable Energy (MNRE) wherein it has sanctioned total cost of Rs. 1312.95 Lakhs i.e. Rs.13.13 Crores for setting the 1.2 MW biogas based power project of the appellant. For convenience, the calculation of the Capital cost is given below:-

$$\begin{aligned} \text{Total capital cost} &= 13.13 + 0.51 - 3.60 = 10.04 \text{ Crores.} \\ \text{Capital cost per MW} &= 10.04/1.2 = 8.37 \text{ Crores.} \end{aligned}$$

The Commission has thus considered the capital cost @ Rs. 8.50 Crores/MW in the impugned order. The relevant paragraph of the impugned order dated 5.2.2015 is reproduced hereunder:-

“Capital Cost (including cost of power evacuation infrastructure)

6.2 Capital Cost is the most critical element in tariff determination. This comprises of cost of land, plant and machinery, civil works, erection, commissioning, cost associated with power evacuation and other related charges.

6.3 The Commission had proposed capital cost of Rs. 9.25 Crores/MW (inclusive of power evacuation cost net subsidy) in its draft approach paper floated in November,2014. Various stakeholders have indicated the capital cost ranging from Rs. 8.50 Crores/MW to Rs. 10.00 Crores/ MW.

CERC in its Regulations dated 06.02.2012 have adopted capital cost of Rs. 8.54 Crores/MW for 2014-15 with indexation for future years.

Commission’s views

As brought out earlier, the project cost varies on account of various factors including location of the project, rating of the units, total capacity, technology, designed capacity utilization factor etc. and therefore, a reasonable project cost needs to be considered on a uniform basis for tariff determination.

6.4 The Commission observed that diverse views were expressed by various stakeholders including licensees. However, item wise cost data has not been submitted by any of the project Developers/licensees to substantiate their proposed capital cost. Keeping in view the various data available with the Commission, the Commission is of the view that it would be reasonable to adopt a capital cost of Rs. 9.25 Crores per MW net of subsidy and including cost associated with power evacuation system

from the project site to nearest sub-station of distribution/transmission licensee.

- 6.3 Since the present impugned order is a generic tariff order the actual costs and expenses of the appellant is not relevant to determine the capital cost, however the commission has taken bench mark cost considering the submission of the appellant that MNRE had accepted the project cost at Rs. 1312.95 lakhs **after due appraisal of the project including financial prudence check.** The State Commission has also allowed the grid connectivity expenses of Rs. 51.03 lakhs which the appellant claimed to have paid to discom for 33Kv line/sub-station connection of the appellant's power project.
- 6.4 The judgments cited by the appellant are not applicable to the facts of the present case. It is denied that the order impugned is not the speaking order or that the order has no explanation, analysis or discussion as alleged by the appellant. It is further denied that when there is one generating station it is incumbent upon the State Commission to determine the project specific tariff. Thus, the ratio in ***Star Wire (case)*** is clearly applicable to the facts of the present case as this Hon'ble Tribunal clearly held that if the order reached finality it cannot be re-opened and that even if the generator is the only commissioned plant in the State, it cannot be

claimed that the commission ought to have considered actual capital cost of the appellant and /or be given project specific tariff.

B. THE COST OF FUEL ALLOWED FOR OLD PLANTS AT RS. 145/MT AS AGAINST RS. 175/MT FOR NEW PLANTS. APPELLANT PLANT IS AN OLD PLANT:-

6.5 With respect to cost of fuel allowed for old plants at Rs. 145/MT it is submitted that the State Commission in its approach paper floated in November, 2014 proposed the price of fuel as Rs. 150 per MT including the cost of transportation considering the cow dung as a fuel. M/s RDM care (India) Pvt. Ltd./Appellant suggested the price of cattle dung at Rs.175/MT. Electricity Consumer Society suggested the cost of fuel at Rs. 150 per MT. That stakeholders also suggested that the rate of escalation of fuel cost at 5% p.a.

6.6 The State Commission has considered the suggestions received from the stakeholders before deciding the Cost of Fuel. The Commission has, therefore, decided that it would be appropriate to consider the cost of fuel at Rs. 175 per MT for the purpose of determination of tariff. Also, an escalation in fuel price at the rate of 5 % per annum on base price for all the projects is allowed by the Commission in the impugned order.

6.7 For the existing projects such as M/s RDM care, since it was commissioned on 25.08.2011 and the cost of fuel in the FY 2015-

16 should be as far as equal, the cost of fuel was allowed at Rs.145 per Tonne from the date of commissioning.

For 2011-12	= Rs. 145
2012-13	= Rs. 152
2013-14	= Rs. 160
2014-15	= Rs. 168
2015-16	= Rs. 176

(Escalation at 5% per annum is considered)

6.8 The Appellant has no reason to be aggrieved with the rate of Rs.145/MT as its Plant is commissioned way back in the year 2011 and after escalation the same also reaches to Rs. 175/MT in the Year 2015-2016. Therefore, it is submitted that the contention of the Appellant that it is entitle to fuel cost of Rs. 175 /MT is without any basis and liable to be rejected.

C. FUEL MIX OF 90% COW DUNG AND 10% FRUIT AND VEGETABLE WASTE REJECTED WHICH IS NECESSARY FOR OPERATION OF THE PLANT:-

6.9 With respect to the issue of fruit and vegetable waste mix of 10 % it is respectfully submitted that none of the stakeholder except the petitioner was of the view that there is a necessity of mixing 10 % vegetables and fruits wastes with the Cow Dung to use as a fuel while commenting on the approach paper. The State Commission in the impugned order dated 5.2.2015 has held that there is no necessity of mixing the vegetables & fruits waste with the cow dung to use as a fuel for such types of projects. The relevant

paragraph of the impugned order dated 5.2.2015 is reproduced hereunder:-

“Commission also considered the fact that there is no necessity of mixing the vegetables & fruits waste with the Cow Dung to use as a fuel for such types of projects. These projects can very well perform by using only Cow Dung as a fuel.”

6.10 In the Review Order dated 30.4.2015 the State Commission further reiterated the content of the tariff order dated 05.02.2015 in the following words:-

“In the tariff order dated 05.02.2015, the Commission has already mentioned that the biogas based power projects can very well perform by using only Cow Dung as a fuel. Therefore, the cost of Cow Dung mixed with vegetables/fruits waste cannot be considered.”

D. WRONG ASSUMPTION OF REVENUE OF RS. 1.5 PER KG WITH 5% ESCALATION FOR THE MANURE USED FOR POWER GENERATION:-

6.11 None of the stakeholders including the appellant have denied the collection of by-product as manure and it is also an admitted fact that ‘manure’ coming out of the plant is used in the production of organic fertilizer. Though the State Commission in the approach paper had proposed income from manure at Rs. 2/- kg, but after considering the suggestions of the stake holders including **M/s SEPL** who has suggested that income from manure may be considered at Rs. 1.50/kg , the State Commission allowed the income of Rs.1.50/kg on sale of manure. The relevant

paragraph of the impugned order dated 5.2.2015 is reproduced here under:-

“Income from manure

6.34 In such projects, the produced gas is used to generate electricity running biogas generator sets and the digested slurry known as ‘manure’ coming out of the plant is used for organic fertilizer production. It is estimated that about 10% of the fuel is collected as manure. The Commission had proposed income from manure at Rs.2 per Kg. in its draft approach paper. M.P. Power Management Co. Ltd. suggested considering the same. M/s RDM Care (India) Pvt. Ltd. stated that there is no buyer for the dry manure and the company has to incur expenditure towards labour and cartages for clearing the manure heap. The Electricity Consumer Society suggested exempting income from manure for 10 years. The representative from M/s SEPL stated that income from manure may be considered at Rs. 1.5 per Kg. M/s Value Recyclers and Reclaimers Pvt. Ltd. suggested not considering income from manure as there is no such assured market.

Commission’s views

6.35 The Commission has noted that none of the stakeholders have denied the collection of by-product as manure. The problem associated is the marketing of the manure. After duly considering the stakeholders’ views and the facts, the Commission is of the view that it would be appropriate to consider income from manure at Rs. 1.5 per Kg. and the quantum of manure may be considered at 10% of the quantity of the fuel used. The Commission also considered the escalation of income from manure at 5% p.a. since the cost of the fuel is also escalated at the same rate.”

6.12 The order impugned is a generic order applicable to all biomass power plant across the State of Madhya Pradesh and therefore once when it is found that manure as a bi-product of the biogas based power plant is having a commercial value and the same is

in demand in fertilizer production the Commission is of the view that it is appropriate to consider the income from sale of such manure at Rs. 1.5 /Kg, It is further submitted that problem of proper Marketing for sale of manure is a generator specific issue and therefore it is the generator who has to short out this issue at their individual level and the same cannot addressed in the generic order

7. The gist of Written Submissions made by Mr. Manoj Dubey, Ld. Counsel of Respondent No. 2, M.P. Power Management Company Ltd. is as below:-

A. CAPITAL COST ALLOWED AT RS. 8.5 CRORES / MW INSTEAD OF RS. 12.28 CRORES/ MW AND NET OF SUBSIDY AT RS. 10.23 CRORES / MW AS CLAIMED BY THE APPELLANT:-

7.1 The Ministry of New and Renewable Energy has accepted the capital cost of Rs. 13.13Crores after due appraisal of the project including financial prudence check with respect to project of the Appellant. The Appellant has also paid a sum of Rs. 51.03 Lakhs to the Distribution Licensee towards the cost of infrastructure. Therefore, the total expenditure works out to Rs. 13.64 Crores (Rs. 13.13 Crores plus Rs. 51.03 Lakhs). Deducting the amount of subsidy received from the MNRE, the net amount works out to Rs. 10.04 Crores for 1.2 MW project. Thus, per MW cost works out to be Rs.8.37 Crores. The learned Commission, vide impugned

order, has allowed a Capital Cost of Rs. 8.50 Crores/MW, which, in general, is more than the project specific allowable capital cost to the Appellant.

- 7.2 The learned State Commission kept itself alive of the letter dated 30.11.2010 issued by Ministry of New and Renewable Energy (MNRE) wherein a total cost of Rs. 1312.95 Lakhs i.e. Rs.13.13 Crores was sanctioned for setting the 1.2 MW biogas based power project of the appellant. For convenience, the calculation of the Capital cost is as under:-

$$\begin{aligned} \text{Total capital cost} &= 13.13 + 0.51 - 3.60 = 10.04 \text{ Crs.} \\ \text{Capital cost per MW} &= 10.04/1.2 = 8.37 \text{ Crs.} \end{aligned}$$

The learned Commission, thus, rightly considered the capital cost @ Rs. 8.50 Crores/MW, in general, vide the impugned order.

B. COST OF FUEL ALLOWED FOR OLD PLANTS AT RS. 145/MT AS AGAINST RS. 175/MT FOR NEW PLANTS. APPELLANT PLANT IS AN OLD PLANT:

- 7.3 The Appellant is losing sight over the Note at the bottom to the table in Clause 8.1 of the impugned order which provides as **“Note: Other norms shall be the same as mentioned in clause 7 for new projects.”** Clause 7, under the head **“Key elements of norms”** very clearly provides for an **escalation of 5%** as **“Fuel Price Escalation”**. If the Appellant is advised to read Clause 8 together with Clause 7, then the grounds raised by him in the Appeal relating to fuel price have no merits.

- 7.4 The Plant is an old plant, commissioned way back in the year 2011. After escalation, the Fuel Cost for it also reaches to Rs. 175/MT in the Year 2015-2016. Therefore, the Appellant should have no grievances on this issue. Its claim to fuel cost of Rs. 175/MT is already met in the impugned order.
- 7.5 In respect of cost of fuel allowed for old plants at Rs. 145/MT, the learned State Commission in its approach paper floated in November, 2014, had proposed the price of fuel as Rs. 150 per MT, including the cost of transportation, considering the cow dung as a fuel. The Appellant suggested the price of cattle dung at Rs.175/MT. The Electricity Consumer Society suggested the cost of fuel at Rs. 150 per MT. The stakeholders also suggested the rate of escalation of fuel cost at 5% p.a.
- 7.6 The learned State Commission was rightly pleased to the suggestions received from the stakeholders before deciding the Cost of Fuel. The fact that there is no necessity of mixing the vegetables & fruits waste with the Cow Dung to use as a fuel for such types of projects was also considered. These projects can very well perform by using Cow Dung alone as a fuel, which is readily available in large quantity near the project site of the Appellant. The Appellant's project is situated in Jabalpur and the

project is surrounded in a vicinity of one km. only by at least 75 big and medium sized dairies, each having a minimum of 500 to 1500 buffaloes. Cow-dung is available in abundance at throw away prices and most of the time at no cost. Difficulty in disposal of cow-dung is one of the major reasons for this in view of pollution norms. The learned State Commission has rightly decided the cost of fuel at Rs. 175 per MT. An escalation, further, in fuel price at the rate of 5% per annum on base price for all the projects has also been allowed in the impugned order.

7.7 For the existing projects, such as the Appellant, since it was commissioned on 25.08.2011 and the cost of fuel in the FY 2015-16 should be as far as equal, the cost of fuel was allowed at Rs.145 per Tonne from the date of commissioning as under:

For 2011-12	= Rs. 145
2012-13	= Rs. 152
2013-14	= Rs. 160
2014-15	= Rs. 168
2015-16	= Rs. 176

(Escalation at 5% per annum is considered)

7.8 The Appellant has no reason to be aggrieved with the rate of Rs.145/MT as its Plant is commissioned way back in the year 2011 and after escalation the same also reaches to Rs. 175/MT in the Year 2015-2016. Therefore, it is submitted that the contention of

the Appellant that it is entitled to fuel cost of Rs. 175 /MT is without any basis and liable to be rejected.

C. ISSUE C - FUEL MIX OF 90% COW DUNG AND 10% FRUIT AND VEGETABLE WASTE REJECTED WHICH IS NECESSARY FOR OPERATION OF THE PLANT:-

7.9 With respect to the issue of fruit and vegetable waste mix of 10 % it is respectfully submitted that none of the stakeholder except the petitioner was of the view that there is a necessity of mixing 10 % vegetables and fruits wastes with the Cow Dung to use as a fuel while commenting on the approach paper. The State Commission in the impugned order dated 05-02-2015 has held that there is no necessity of mixing the vegetables & fruits waste with the cow dung to use as a fuel for such types of projects. The relevant paragraph of the impugned order dated 05-02-2015 is reproduced hereunder:-

“Commission also considered the fact that there is no necessity of mixing the vegetables & fruits waste with the Cow Dung to use as a fuel for such types of projects. These projects can very well perform by using only Cow Dung as a fuel.”

7.10 In the Review Order dated 30-04-2015 the learned State Commission further reiterated the content of the tariff order dated 05-02-2015 as under:-

“In the tariff order dated 05.02.2015, the Commission has already mentioned that the biogas based power projects can very well perform by using only Cow Dung as a fuel.

Therefore, the cost of Cow Dung mixed with vegetables/fruits waste cannot be considered.”

7.11 Even otherwise, the impugned order is a generic tariff order and not a project specific one so as to necessarily allow 10% mix of vegetable and fruit waste. The learned Commission has rightly recognized this fact in Clause 6.21 and 6.24 of impugned order. Vegetable and fruit wastes are also not readily available in and around the city of Jabalpur. Whatever such waste is available, it goes as a municipal waste collected as door-to-door waste collection management system as a fuel for another plant, the first and a model plant for generating electricity situated at Kathaunda in the outskirts of the city. The local Municipal Corporation is, even after a very efficient waste collection management system does not have a system to segregate the vegetable and fruit waste from other municipal waste and is also not able to meet out the cent-percent fuel requirement of the said MSW Plant at Kathaunda in Jabalpur. Neither the Appellant nor anybody else has any independent arrangement for obtaining Vegetable and Fruit Waste separately from the Municipal Corporation. There are also no factory/industry that may yield vegetable and fruit waste in and around the city to cater to such requirement of the Appellant, in so far it relates to vegetable and fruit waste.

7.12 The Appellant also has not been able to establish that its plant cannot run without vegetable and fruit waste as a mix of 10% in main fuel. If at all such a mix is necessary. The Appellant had the choice to elect for and press for a project specific tariff.

D. WRONG ASSUMPTION OF REVENUE OF RS. 1.5 PER KG WITH 5% ESCALATION FOR THE MANURE USED FOR POWER GENERATION:-

7.13 Organic farming is now a great demand. Chemical fertilizers are, anymore, not preferential choice. The Detailed Project Report recognises the quality and value of manure as a by-product as “The dry cake goes to the vermin compost **to produce High quality organic manure** whereas.....green belt development.”

7.14 It is very specifically submitted that none of the stakeholders including the appellant have denied the collection of by-product as manure and it is also an admitted fact that ‘manure’ coming out of the plant is used as organic fertilizer. Though, the State Commission in the approach paper had proposed income from manure at Rs. 2/- kg., but after considering the suggestions of the stake holders including M/s SEPL who has suggested that income from manure may be considered at Rs. 1.50/kg., the learned State Commission allowed the income of Rs.1.50/kg. on sale of manure.

The relevant paragraph of the impugned order dated 05-02-2015 is reproduced as hereunder:-

“Income from manure:

6.34 In such projects, the produced gas is used to generate electricity running biogas generator sets and the digested slurry known as ‘manure’ coming out of the plant is used for organic fertilizer production. It is estimated that about 10% of the fuel is collected as manure. The Commission had proposed income from manure at Rs.2 per Kg. in its draft approach paper. M.P. Power Management Co. Ltd. suggested considering the same. M/s RDM Care (India) Pvt. Ltd. stated that there is no buyer for the dry manure and the company has to incur expenditure towards labour and cartages for clearing the manure heap. The Electricity Consumer Society suggested exempting income from manure for 10 years. The representative from M/s SEPL stated that income from manure may be considered at Rs. 1.5 per Kg. M/s Value Recyclers and Reclaimers Pvt. Ltd. suggested not considering income from manure as there is no such assured market.

Commission’s views

6.35 The Commission has noted that none of the stakeholders have denied the collection of by-product as manure. The problem associated is the marketing of the manure. After duly considering the stakeholders’ views and the facts, the Commission is of the view that it would be appropriate to consider income from manure at Rs. 1.5 per Kg. and the quantum of manure may be considered at 10% of the quantity of the fuel used. The Commission also considered the escalation of income from manure at 5% p.a. since the cost of the fuel is also escalated at the same rate.”

7.15 Furthermore, the order impugned is a generic order applicable to all biogas power plant across the State of Madhya Pradesh and therefore once when it is found that manure as a bi-product of the biogas based power plant and is having a commercial value and

the same is in demand in fertilizer production, the learned Commission is rightly of the view that it is appropriate to consider the income from sale of such manure at Rs. 1.5 /Kg. The problem of proper marketing for sale of manure and a zeal to operate the plant profitably and effectively is a generator specific issue and therefore it is the generator who has to sort out this issue at its individual level only and the same cannot addressed in the generic order

7.16 In totality of the facts and circumstances of the case the appeal filed by the Appellant is totally misconceived and the same deserves to be dismissed with costs. Hence, prayed that the Hon'ble Tribunal may be pleased to dismiss the appeal, and, for which, the Respondent shall for ever remain obliged.

8. **We have heard learned counsel appearing for the Appellant and learned counsel appearing for the Respondents at considerable length of time. We have perused the written submissions filed by the learned counsel appearing for the parties carefully and also perused relevant material available on records. The following issues arise for our consideration in the present appeal are as follows :-**

- A. Capital cost allowed at Rs.8.5 Crores/MW instead of Rs. 10.23 crores/MW;
- B. The cost of fuel for old plants taken at Rs.145/MT as against Rs. 175/MT for new plants;
- C. Fuel mix of 90% cow dung and 10% fruit and vegetable waste rejected;
- D. Assumption of revenue of Rs.1.5 per kg from sale of manure;

9. Our Findings and Analysis on the above issues

Issue No. A: Capital Cost

9.1 The Appellant has submitted that he is operating its bio-gas generating station at a capital cost of Rs. 15.88 crores and after taking into account the subsidy given by MNRE, the net capital cost of the project works out to Rs. 12.28 crores. As such, with the installed capacity of the project as 1.2 MW, the per MW cost works out to Rs. 10.23 crores. The Appellant has further contended that the State Commission has not even considered the actual capital cost incurred by the Appellant which in fact should be the reference point subject to prudence check by the State Commission. It is, further alleged that there has been no explanation, analysis or discussion carried out by the State Commission in the Impugned Order to this effect. It is further submitted that it is a settled principle of law that an order passed by the quasi-judicial body must be a speaking order and must contain the reasons based on which the decision has been taken. To support its contention, the Appellant has mentioned an array of judgments of the Hon'ble Supreme Court. The Appellant has further brought out that its project is the only project of its kind in the State of Madhya Pradesh and the State Commission ought to

have determined tariff under Section 62 of the Electricity Act as the generic tariff is prescribed in the cases where there are multiple projects.

Per Contra:

9.2 The learned counsel for the Respondent Commission and the Respondent Madhya Pradesh Power Management Company Limited have indicated that the State Commission has considered the capital cost as accepted by MNRE (Rs. 13.13 crores) and added thereon the cost of infrastructure required for grid connectivity (Rs. 51.03 lakhs) making the total project cost as 13.64 crores. Further, with the accounting for the subsidy (Rs. 3.63 crores) provided by the MNRE, the total project cost works out to be Rs. 10.04 crores for 1.2 MW project. Thus, per MW cost works out as Rs. 8.37 crores which has further been rounded up by the State Commission to Rs. 8.50 crores/MW. The Respondents have further refuted the allegations of the Appellant regarding the Impugned Order of not being the speaking order and having no explanation, analysis or discussion. They have stated that enough explanation has been provided in the Impugned Order on this issue. The Respondents have further denied that when there is one generating station, it is incumbent upon the State Commission to determine the project specific tariff. The Respondent

Commission has cited the ratio in the **Star Wire case** which is said to be applicable to the facts of the present case as this Hon'ble Tribunal clearly held that if the order reached finality, it cannot be re-opened and that even if the generator is the only commissioned plant in the State.

Our Findings:

9.3 We have gone through the detailed submissions of the Appellant and the Respondents and find that the cost analysis has been done by the State Commission only on the basis of DPR cost of the project submitted to MNRE for consideration of subsidy/CFA. MNRE while conveying its sanction for a subsidy of Rs. 3.6 crores did not render any observation on the project cost. Accordingly, it has been presumed that DPR cost is the final cost and also bears the approval of MNRE. The Appellant has indicated that it has incurred an expenditure of Rs. 15.88 crores on the project and taking into account the subsidy granted by MNRE, the net capital cost works out to Rs. 12.28 crores. It is an admitted fact that the project costs estimated in the DPR are based on the broad parameters of planning, engineering, procurement, execution, etc. but the final completed costs are generally found to be, by and large, different from the DPR costs. Similar is the case for the instant bio-gas plant. Even in the conventional projects like

thermal, hydro and gas based projects, the completed cost is generally found to be more than the DPR stage cost. Keeping this aspect in view, we opine that the State Commission could have applied its prudence check over the total expenditures incurred on the project by the Appellant and arrived at per MW cost accordingly for tariff computations. We also find that the generic tariff granted to the Appellant at Rs. 3.4 per unit is considered to be quite low as compared to the similar projects in other parts of the country and also the generic tariff for biogas plant provided by CERC in its tariff order dated 31.03.2015 for the FY 2015-16. As such, the cost/tariff fixation of the plant by the State Commission needs to be reviewed in the interest of justice and equity.

Issue No. B: Cost of Fuel

9.4 The Appellant has submitted that its plant/existing plant has been granted the fuel cost as Rs. 145/MT whereas Rs. 175/MT has been provided for the new plant.

Per Contra:

9.5 The State Commission and the Respondent (MPPMCL), have pointed out that while considering an escalation of 5% per annum, the fuel cost allowed to the Appellant as Rs. 145/MT for 2011-12 works out to the same figure of Rs. 175/MT for the year 2015-16

and as such, the Appellant should not be aggrieved on this account.

Our Findings:

9.6 During the course of hearing, the matter has been deliberated in detail and with the clarifications rendered by the learned counsel of the State Commission that at the base level of 2015-16, the new plants as well as the old plants are getting the same fuel cost of Rs. 175/MT including the plant of the Appellant. We accordingly, conclude that the matter gets duly clarified and the Appellant should not be aggrieved on this account.

Issue No. C: Fuel Mix

9.7 The Appellant has contended that the State Commission has erroneously held that in view of the ample availability of cow dung, the Appellant must operate its plant with 100% cow dung without adding waste from fruits and vegetables. The Appellant has pointed out that its plant is designed to be operated with 90% cow dung, and 10% waste from fruits and vegetables because this leads to the formation of methane which is used for running the plant. It has further stated that the technology of the plant has been imported from Holland and as per design of the plant production of methane is necessary and that is why 10% fruits and vegetable waste is needed to be mixed.

Per Contra:

- 9.8 The Respondents submitted that none of the stakeholders except the petitioner was of the view that there is a necessity of mixing 10% wastes from fruits and vegetables with the cow dung to use as a fuel while commenting on the approach paper of the State Commission. The Respondents have further added that the fruits and vegetables wastes are also not readily available in an around the location of the bio-gas plant and whatever such wastes is available, it goes as a municipal waste collected as door-to-door waste collection management system as a fuel for other generating plant (MSW) located in the outskirts of the city.
- 9.9 The Respondent has further submitted that the local Municipal Corporation, even after a very efficient waste collection management system, does not have a system to segregate the vegetables and fruits waste from other municipal waste and is also not able to meet out the total fuel requirement of the said MSW Plant. The Appellant also has not been able to establish that its plant cannot run without mixing the fruits and vegetables waste. Thus, if at all such mix is necessary, the Appellant had the choice to elect and press for a project specific tariff.

Our Findings:

9.10 We have gone through the contentions of the Appellant as well as the Respondents and noted that the State Commission has concluded in the Impugned Order that there is no necessity of mixing the fruits and vegetables waste with the cow dung to use as a fuel for such types of projects. These projects can be very well performed by using only cow dung as a fuel. The same views have been reiterated by the State Commission in its Review Order dated 30.04.2015. The reference waste to energy plant is a single/unique plant in the State of Madhya Pradesh where the technology has been brought from Holland and said to have been technically designed to run on 90:10 fuel mix basis. It is further stated by the Appellant that 10% fruits and vegetables waste is required to be mixed with the cow dung because it leads to formation of methane which is essential for running of the plant. While the findings of the Commission in the Impugned Order could be considered as a prima facie, the actual facts in this regard can be ascertained only through the Original Equipment Manufacturer (OEM) or by conducting a scientific study.

Thus, it ought to have been ascertained by the State Commission based on the above before arriving at a final conclusion which

could also be referred for the future biogas plants in the State. It is, therefore, just and appropriate that the matter of the fuel mix is got examined on its technical applicability so as to arrive at a reasonably justified conclusion.

Issue No. D: Revenue from Sale of Manure

9.11 The Appellant has submitted that the State Commission without considering the problems associated with the sale of manure such as diminished potency of dried and burnt manure, dearth of buyers, additional expenditure on labour and cartage, etc. has assumed the manure sale rate of Rs. 1.5/Kg.

9.12 The Appellant has further pointed out that even going by the fact that only 10% is considered as residue, it amounts to 15 paise/Kg whereas the fuel cost itself is 17 paise/Kg. In fact, even the fresh manure would in all possibility cost less than the price fixed by the State Commission for the used burnt manure and also, if anyone desires to buy manure could obviously buy the fresh manure rather than used/burnt one. The further escalation of 5% per annum on the manure is beyond the reality and could cause additional distress to the Appellant.

Per Contra:

9.13 The Respondents have contested that none of the stakeholders including the Appellant have denied the collection of by-product as

manure which is used in production of organic fertilizer. In fact in the approach paper, the income from manure was proposed to be at Rs. 2/Kg but after considering the suggestions of the stakeholders, the same has been brought down to Rs. 1.5/Kg. It has further been submitted by the Respondents that the Impugned Order is a generic order applicable to all biogas power plants across the State of Madhya Pradesh and once it is ascertained that manure as a by-product is having a commercial value on account of its demand in fertilizer production, the State Commission has considered appropriate to justify the income from sale of such manure at Rs. 1.5/Kg.

Our Findings:

9.14 We have analyzed the submissions made by the respective counsel of the rival parties in this regard and observed that the manure as a by-product has commercial value on account of its demand for production of organic fertilizer in and around the State. We have also perused the DPR appended with the Appeal and note that the bio-gas plant had envisaged production of compost fertilizer besides power generation in order to justify the viability of the plant. As such the State Commission after considering the views/feedback from various stakeholders has rightly priced the manure at Rs. 1.5/Kg. What is, thus required is creation of a

proper and effective marketing mechanism/strategy for sale of manure or the organic fertilizer produced by it.

Summary of Findings:

9.15 In view of our findings and analysis brought out at supra, out of the four issues, the decision of the State Commission on issues 'B' and 'D' are just and proper. The issues 'A' and 'C' would however, need to be examined afresh taking into account our above findings. Hence, the Appeal is partly allowed to the extent of issues relating to the 'project cost' and 'fuel mix'. On other two issues viz. 'fuel cost' and 'manure cost', we do not feel any necessity to interfere in the findings of the State Commission.

ORDER

We are of the considered opinion that some of the issues raised in the present Appeal have merit, as discussed above. The Appeal (No. 327 of 2017) is partly allowed to the extent of issues relating to the 'Project Cost' and 'Fuel Mix'. The Impugned Order dated 05.02.2015 passed by the Madhya Pradesh Electricity Regulatory Commission (MPERC) is hereby set aside to that extent, as stated supra. The matter stands remitted back to the State Regulatory Commission for reconsideration afresh, in light of the observations

made by us in the preceding paragraphs and decide the same after offering reasonable opportunity to the Appellant and Respondents and dispose the matter in accordance with law as expeditiously as possible at any rate within a period of six months from the date of appearance of the parties.

The learned counsel appearing for the Appellant and learned counsel appearing for the Respondents are directed to appear before the State Commission without notice on 28.5.2018 without fail for obtaining necessary date of hearing.

No order as to costs.

Pronounced in the open Court on this day of **18th April, 2018.**

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

REPORTABLE / ~~NON-REPORTABLE~~