

In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

Appeal no. 54 of 2015

Dated: 10th December, 2015

Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of:

Green Energy Association
Sargam, 143, Taqdir Terrace
Near Shirodkar High School
Dr. E. Borjes Road
Parel (E), Mumbai – 400 012

...Appellant(s)/
Petitioner

Versus

1. Himachal Pradesh Electricity Regulatory Commission
Keonthal Commercial Complex, Khalini
Shimla – 171 002 ...Respondent No.1
2. The H.P. State Electricity Board Ltd.
Through its Executive Director (Pers.)
Vidyut Bhawan
Shimla – 171 004 ...Respondent No.2
3. The Directorate of Energy
Phase-3, Sector 5 Shanti Bhawan
New Shimla – 171 009 ...Respondent No.3
4. M/s. Ujaas Energy Limited
211/1. Opp. Sector – C,
Metalman Industrial Area
Sanwer Road, Indore
Madhya Pradesh – 452 015 ...Respondent No.4

Counsel for the Appellant : **Mr. Sanjay Sen, Sr. Adv.**
Mr. Hemant Singh
Mr. Tabrez Malawat
Ms. Meghana Aggarwal
Mr. Tushar Nagar
Ms. Shikha Ohri

Counsel for the Respondent : **Ms. Akshi Seem**
Mr. Rinku Gautam for R-1

Mr. Anand K. Ganesan,
Ms. Swapna Seshadri,
Ms. Mandakini Ghosh and
Mr. Ishaan Mukherjee for R-2

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

This Appeal has been filed by M/s. Green Energy Association (**hereinafter referred to as “Appellant”**) under Section 111 of the Electricity Act, 2003 against the Impugned Order 10.11.2014 passed by the Himachal Pradesh Electricity Regulatory Commission (**hereinafter referred to as “State Commission”, the Respondent no.1**) in Petition No. 129 of 2013.

2. The Appellant is a registered association of developers engaged in the generation of electricity through renewable energy sources such

as solar, wind etc. A list of the members of the Appellant Association along with Memorandum of Association is annexed to the present Appeal.

- a) The Respondent no.1 herein is the Himachal Pradesh Electricity Regulatory Commission, constituted under the provisions of the Electricity Act, 2003.
- b) The H.P. State Electricity Board Ltd. (**hereinafter referred to as “Respondent no. 2”**) is the Distribution Licensee in the State of Himachal Pradesh.
- c) The Directorate of Energy, Himachal Pradesh is the Respondent no.3 (**hereinafter referred to as “Respondent no.3”**), and this is an authority created under the administrative control of Government of Himachal Pradesh to promote power generation, and has been nominated as the State Agency to undertake various functions under Regulations, 2010 issued by the State Commission for Renewable Power Purchase Obligation and its Compliance (**“RPPO”**).
- d) M/s. Ujaas Energy Limited (**hereinafter referred to as “Respondent no.4”**), is a company engaged in generation of electricity through non-conventional sources of energy and was

the Petitioner in Petition no. 129 of 2013 filed before the State Commission which was subsequently decided by the Impugned Order dated 10.11.2014.

3. The facts of the Appeal are as follows.

a) The State Commission by the Impugned Order dated 10.11.2014 concluded that –

“the obligated entity has also failed to purchase the Solar RECs available in the power exchanges, the obligated entity is liable to pay compensation in terms of regulation 9 of the RPPO Regulations, whereunder the State Commission may direct the obligated entity to deposit into a separate fund such amount as may be determined by the State Commission on the basis of the shortfall in RPPO energy and forbearance price decided by the Central Commission, which is to be utilized by the State Commission partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power from renewable sources of energy.”

b) Further, the State Commission by its Impugned Order dated 10.11.2014, decided to utilize the entire amount of Rs. 17.23 crores as a result shortfall in the RPPO for the FY 2013-14 for creating sub-transmission infrastructure (11 KV and 33 KV) for evacuation of power from renewable sources of energy instead of partly utilizing this amount for purchase of Renewable Energy Certificates (RECs) in terms of Regulation 9 of the RPPO Regulations.

- c) The Appellant is aggrieved by the Impugned Order dated 10.11.2014 passed by the State Commission on limited issue that instead of directing that compensation recovered on account of non-fulfillment of the RPPO certificate should have been utilized partly for the purchase of RECs and partly for the development of sub-transmission infrastructure, the State Commission has allowed the entire compensation of Rs. 17.23 crores to be spent on development of sub-transmission infrastructure.
 - d) The Appellant stated that the Impugned Order passed by the State Commission is in contravention of Regulation 9 of the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010.
 - e) As per the Appellant, the State Commission erred in interpreting the term “and” as “or” in the proviso to Regulation 9 (1) of the RPPO Regulations.
4. We heard Mr. Sanjay Sen, learned senior Counsel for the Appellant and Ms. Akshi Seem, learned Counsel for Respondent

no.1 and Mr. Anand K. Ganesan, learned Counsel for Respondent no.2 and considered their written submissions and arguments put forth in the proceedings before us.

5. The only issue for our consideration is **whether the State Commission has erred in allocating the entire compensation amount recovered on account of shortfall in RPPO for the FY 2013-14 for the development of sub-transmission infrastructure and by not allocating any amount out of the total compensation amount towards purchase of Renewable Energy Certificates (RECs)?**

6. The relevant submissions/arguments of the Appellant and the Respondents and our observations are brought out in the succeeding paras.
 - a). The Appellant submitted that Renewable Energy Certificates (RECs) mechanism framed by the Central Commission as well as by the State Commission has been primarily evolved to address the uneven distribution of renewable energy sources across the country since there are States where the potential of renewable

energy sources is not significant and there could be States where a lot of potential for the renewable energy sources is available. The REC mechanism is for ensuring the optimum harnessing of the renewable energy potential of States where there are avenues for harnessing the potential beyond the renewable purchase obligation level fixed by the State Commissions. This concept of renewable energy certificate was introduced by the Central Commission/State Commission through the REC Regulations. The Renewable Energy Certificates (RECs) were introduced as a market based instrument to promote the renewable energy and facilitate renewable purchase obligations and these certificates were introduced with an aim to address the mismatch between the availability of renewable energy source potential and the requirement of the obligated entity to meet their renewable purchase obligation.

- b) As per the Appellant, the penal provisions for shortfall in the RPPO attracted the compensation which in this case is Rs. 17.23 crores for the FY 2013-14 and it was the duty of the State Commission to have directed utilisation of this compensation amount for purchase

of RECs as well as for construction of sub-transmission system in the ratio of 50:50.

- c) The Appellant further submitted that the State Commission has categorically stated in their RPPO Regulations that purchase of RECs is an alternate mechanism for meeting the shortfall in the RPPO. In the event the entity is not able to meet the obligations under the RPPO in that case the said obligation can be met by purchasing RECs from the energy exchanges. In support of this argument, the Appellant quoted the following RPPO Regulations of the State Commission;

“Regulations 5

Certificates under the regulations of the Central Commission.-

(1) Subject to the terms and conditions contained in these regulations the Certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these regulations for the obligated entities to purchase electricity from renewable energy sources:

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based solar as renewable energy source can be fulfilled by purchase of solar certificates only and the obligation to purchase electricity from

generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates.

(2) xx xx xx xx

(3) The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in sub-regulation (1) shall be deposited by the obligated entities with the Commission in accordance with the detailed procedure issued by the Central Agency.

Regulation 7

Distribution Licensee.-

(1) Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable sources for the ensuing year in tariff/annual performance review petition in accordance with regulations notified by the Commission. The estimated quantum of purchase shall be in accordance with sub- regulation (1) of regulation 4 of these regulations. If the distribution licensee is unable to fulfill the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess renewable power purchase would not be adjusted in the ensuing year.

(2) Despite availability of energy from renewable sources under the Power Purchase Agreements or the power exchange mechanism or from its own renewable sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable sources, it shall be liable to pay compensation as per regulation 9 of these regulations.”

- d) The Appellant further stated that the Impugned Order passed by the State Commission is in contravention of the provisions of the Regulation 9 of the RPPO Regulations issued by the State Commission. Since the Regulations specifically provide for the fund created on the basis of the shortfall in RPPO is to be utilised partly

for the purchase of RECs “and” partly for creation of transmission/sub-transmission system infrastructure for renewable energy sources.

By allocating the entire fund to the creation of sub-transmission system infrastructure, the State Commission negated the whole intent of the REC mechanism as per the Regulation 9 of the RPPO Regulations of the State Commission which, *interalia*, states as follows;

“Regulation 9

Consequences of default.-

(1) Where the obligated entity does not fulfill the renewable purchase obligation as provided in these regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPPO and the forbearance price decided by the Central Commission:

Provided that the fund so created shall be utilised, as may be directed by the Commission partly for purchase of the certificates and partly for development of transmission/ sub transmission infrastructure for evacuation of power from generating stations based on renewable energy sources:

Provided further that the obligated entities shall not be authorized to use the fund created in pursuance of regulation without prior approval of the Commission:

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund:

Provided further that the distribution licensee shall be in breach of its licence conditions if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

(2) Where any obligated entity fails to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be imposed by the Commission under section 142 of the Act:

Provided that in case of genuine difficulty in complying with the renewable power purchase obligation because of non-availability of certificates, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision of sub-regulation (1) or the provision of section 142 of the Act shall not be invoked.”

- e) The Appellant alleged that while passing the Impugned Order the State Commission has erroneously overlooked the overall impact of its order which has affected the promotion of renewable energy in the State of Himachal Pradesh and it would have serious ramifications as it defeats the very purpose of promoting the renewable energy in the State as well as in the country as a whole.

- f) The Appellant further submitted that the intent of the HPERC RPPO Regulation, 2010 can only be fulfilled in the event at least 50% of the penalty amount contemplated in the Regulation 9 of the RPPO Regulations issued by the State Commission is directed to be utilized for purchase of RECs. Such a direction would have served the purpose of short term benefit to the RE developers through purchase of RECs. As per the Appellant, the non-purchase of RECs in the market has resulted in the REC mechanism getting redundant.
- g) The Appellant further stated that the word “and” in the said Regulations ought to have been interpreted that at least some portion of the penalty amount should have been assigned for purchase of RECs by the State Commission and it should not have been the case that no penalty amount has been assigned to purchase of RECs when the Regulation states clearly that such fund is to be used for augmentation of transmission system and purchase of the RECs.

- h) In support of their arguments, they quoted judgment passed by this Tribunal in its order dated 16.04.2015 and full bench judgment of this Tribunal dated 20.04.2015 wherein the importance of RECs has been emphasized. The operating portion of these judgments is reproduced below;

Judgment dated 16.04.2015 in Appeal no. 258 of 2013

“71. Summary of our findings:

- (i) The National Tariff Policy and the Regulation of the Central Commission and the State Commission recognize REC as valid instrument for fulfilling Renewable Purchase Obligation cast upon the obligated entities under Section 86(1)(e) of the Electricity Act, 2003. Purchase of REC would be deemed as purchase of energy from renewable energy source for fulfilling RPO obligation. When a legal fiction has been created by a statute, the same should be given full effect.*
- (ii) An obligated entity has option to fulfill its RPO either by procuring renewable energy in physical form or by REC or partly by REC and partly by physical renewable energy. However, a distribution licensee has to exercise the option based on economic principles. An obligated entity other than the distribution licensee may also opt for purchase of REC for fulfilling its RPO obligation to avoid the issues involved in banking, open access, sale of surplus power, etc., or if the RPO requirement is too small.*
- (iii) Renewable energy generators like conventional generators have been given freedom under the Electricity Act in respect of choice of site, choice of counter-party buyer, freedom from tariff regulation when the generating company supplies to a trader or directly to a consumer. So far, the renewable energy generators*

were not able to exercise this freedom due to various constraints. The REC mechanism has opened up the market for renewable energy generators helping in expeditious exploitation of renewable energy potential in the country thus, serving the object of the Electricity Act, 2003. Thus, REC mechanism has to be encouraged. By treating REC as a valid instrument for discharge of mandatory RPO as set out in the Regulations, the State commission has only followed the mandate of the Electricity Act, 2003 under Section 86(1)(e) for promotion of renewable sources of energy in the State.

- (iv) *The State Commission can revise the RPO before or during a year or after passing of year under Regulation 4.2 of RE Regulation 2010 as explained under paragraphs 47 to 51 above. If the distribution licensee has not made efforts to procure requisite renewable energy to fulfill the RPO and also has not procured REC, the State Commission should not revise RPO under Regulation 4.2. However, while revising the RPO targets, the State commission has to ensure that such revision should not defeat the object of the Electricity Act and the Regulations.*
- (v) *If the RPO targets are revised under Regulation 4.2 due to inadequate capacity addition in a resource rich State, such reduction has to be uniform for all the entities.*
- (vi) *Under 5th proviso to Regulation 9, if the Commission is convinced that the obligated entity has faced genuine difficulty in meeting the RPO due to non-availability of power from renewable sources or the REC, it may allow carry forward the compliance requirement to the next year. However, before exercising power under Regulation 9, the State Commission has to satisfy itself that there was difficulty in meeting the RPO from purchase of REC. Therefore, non-availability of REC is a pre-condition for carry forward under Regulation 9.*
- (vii) *Admittedly there was substantial reduction in capacity addition of wind energy and other sources of renewable energy in the State during FY 2012-13 due to reasons beyond the control of the distribution licensee. Under such a condition the State Commission can reduce RPO targets for the wind energy and*

other energy. However, such reduction due to capacity constraints has to be uniform for all the obligated entities in the State.

- (viii) In the present case, the State Commission has revised the RPO targets for various distribution licensees as per the actual. This way the State Commission has set up different RPO targets for four States owned distribution licensees, Torrent Power Surat and Ahmedabad at different levels for the same reason of inadequate capacity addition. This is not permissible. The State Commission has incorrectly revised the RPO for the deemed distribution licensees to zero or nearly negligible amount due to financial impact, low energy consumption, nascent stage of operation etc., in contravention to the Regulations.*
- (ix) We find that RPO compliance of GUVNL for wind energy was satisfactory but compliance of biomass and other non-solar energy was quite low due to which there was default in fulfilling the nonsolar RPO. Thus, during FY 2012-13 there appeared to be inadequate generation of biomass and other non-solar energy sources in the State. The State Commission has to examine the reasons for the same and take necessary measures for accelerating capacity addition of biomass and other sources of renewable energy in the State.*
- (x) We remand the matter to the State Commission to reconsider the whole issue afresh in light of our findings in this judgment. The State Commission is empowered to reduce the RPO targets for all the entities uniformly in view of reduction in capacity addition of wind energy and other sources in the State during the FY 2012-13. However, the consequences of shortfall with respect to the revised RPO for different distribution licensees/deemed distribution licensees has to be decided by the State Commission according to Regulation 9.*
- (xi) We do not find any infirmity in the State Commission relaxing the RPO for those deemed distribution licensees who purchase energy from GUVNL/distribution licensees at retail supply tariff*

and their consumption is included in determining the RPO of the supplying distribution licensee.

- (xii) *In the circumstances of the case, we do not want to interfere with the decision of the State Commission to set off the shortfall in non-solar energy purchase with excessive solar energy procured during FY 2012-13. However, we have given certain directions in this regard for future in paragraph 68 above. (xiii) As regards public hearing for review of RPO, we have already given the necessary directions in our judgment in Appeal No. 24 of 2013 which have been reproduced under paragraph 27.”*

Judgment dated 20.04.2015 in O.P. no. 1, 2 and 4 of 2013

“28. In view of above discussions, we deem it appropriate to give directions to the State/Joint Commissions with regard to implementation of Renewable Energy Regulations in their respective States. The Tribunal after considering the contentions of the petitioners and the State/Joint Commissions, Central Commission and MNRE gives the following directions to the State/Joint Commissions under Section 121 of the Act:-

- (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.*
- (ii) *The State Commissions shall obtain proposal with supporting documents for renewable energy procurement by the distribution licensee as part of the tariff petition for the ensuing year/Annual Performance Review for the current year as per the RPO Regulations. Suggestion and objections of public shall be invited on the above petition. The State Commission may give necessary directions with regard to RPO after considering the suggestions and*

objections of the stakeholders. If the distribution licensee is not able to tie up procurement of renewable energy to meet the RPO target, it may plan to purchase RECs to meet its RPO target as per the provisions of the Regulations. Advance planning of REC purchase will give opportunity to the distribution licensees/other obligated entities to purchase REC when the market conditions are more favourable to them.

- (iii) The monitoring of compliance of the RPO should be carried out periodically as provided for in the Regulations. After the completion of the financial year the State Commission may review the performance of the distribution licensees in respect of RPO and give directions as per the Regulations. Suggestions and objections of the public shall be invited in the review proceedings and decisions taken after considering the suggestions/objections, as per law.*
- (iv) The State Commission shall give directions regarding, carry forward/review in RPO and consequential order for default of the distribution licensees/other obligated entities as per the RPO Regulations. If the Regulations recognise REC mechanism as a valid instrument to fulfill the RPO, the carry forward/review should be allowed strictly as per the provisions of the Regulations keeping in view of availability of REC. In this regard the findings of this Tribunal in Appeal no. 258 of 2013 and 21 of 2014 may be referred to which have been given with regard to RE Regulations of Gujarat Commission but the principles would apply in rem. In case of default in fulfilling of RPO by obligated entity, the penal provision as provided for in the Regulations should be exercised.*
- (v) The State Commissions are bound by their own Regulations and they must act strictly in terms of their Regulations.*
- (vi) The provisions in Regulations like power to relax and power to remove difficulty should be exercised judiciously under the exceptional circumstances, as per law and should not be used routinely to defeat the object and purpose of the Regulations.”*

- i) The Appellant has stated that the word “and” issued in the said Regulations should have been given its due consideration in a way to allocate the fund amount to both the stated purposes i.e. sub-transmission system “and” purchase of RECs in some reasonable proportion. Accordingly, in the present context, it was the duty of the State Commission to have directed utilization of the penalty amount for purchase of RECs and for construction of evacuation infrastructure, in the ratio of 50:50 as the same is the only manner in which Regulation 9 can be interpreted, after considering the word “and”, as appearing in the said provision as explained hereinabove.

In this context, the Appellant has cited a judgment of the Hon’ble Supreme Court in M. Satyanarayana vs. State of Karnataka and Anr., reported in (1986) 2 SCC 512. In the said judgment, the following has been held.

“5. If the expression “and” in clause (a) is read independently then there was no need for him to suffer at all and mere participation would be enough to make him a political sufferer. That would defeat the rationale behind the rule. It would, therefore, frustrate

the intention and purpose of the legislature. The expression “and” in these circumstances cannot be read disjunctively. It is not possible to hold that sub-clause (a) should be read independently of sub-clause (b). A statute cannot be construed merely with reference to grammar. Statute whenever the language permits must be construed reasonably and rationally to give effect to the intention and purpose of the legislature. The expression “and” has generally a cumulative effect, requiring the fulfillment of all the conditions that it joins together and it is the antithesis of “or”. In this connection reference may be made to A.K. Gopalan v. State of Madras, [1950] SC 27 : 1950 SCR 88, 126:]. See also the observations of this Court in Ishwar Singh Bindra & Ors. v. State of U.P., [1968] SC 1450 : (1969) 1 SCR 219]”

- j) The Respondent no.1 submitted that the Impugned Order was passed at the instance of M/s. Ujaas Energy Limited, the Respondentno.4 herein, who was the Petitioner and the Appellant herein neither filed the Petition nor participated in the proceedings before the State Commission.

- k) Respondent no.2 stated that the non-procurement during the FY 2013-14 was only due to the delayed commissioning of the generating station of the other generator with whom the Respondent no.2 had executed an agreement for procurement of solar energy and it is not for any reason attributable to the Respondent no.2. The Respondent no.2 further stated that in the FY 2015-16, it is expected to over achieve the RPPO target given by the State Commission including the carrying forward the shortfall for the previous financial years.
- l) Respondent no.2 stated the State Commission has rightly allocated the entire compensation amount for augmentation of transmission system to cater to the renewable generation keeping in view its essential requirement. In this regard, Respondent no.2 quoted the relevant portion of the Impugned Order *interalia* stating as follows:-
- “(a) The award of compensation or Regulation 9 of the REC Regulations was not mandatory, but is a discretion vested with the State Commission to be exercised judiciously on consideration of all relevant facts and circumstances;
- (b) It is open to the State Commission to discharge the obligated entity without directing payment of compensation if the non-

fulfillment is due to a bona fide reasons or due to circumstances beyond the control of the obligated entity;

- (c) The Respondent No.2 has acted bona fide, has made genuine efforts for procurement of solar energy, but could not achieve the same due to circumstances beyond its control;
- (d) The Respondent No.2 has fully met and has in fact far exceeded the target specified for non-solar renewable energy procurement consistently for the last 4 years since when the RPO Regulations came into force;
- (e) A compensation amount of Rs. 17.23 crores is to be deposited by the Respondent No.2 in a separate fund;
- (f) Since there are substantial renewable energy projects in the State which are highly dispersed, creation of sub transmissions and infrastructure is of paramount importance for promotion of renewable energy. Since there are already existing liquidity problems of the Respondent No.2, the above quantum of Rs. 17.23 crores shall be used towards the project financing to create sub transmission infrastructure in the State during the next two years.”

- m) Respondent no.2 further stated that the Impugned Order has not been challenged by any of the parties to the proceedings before the State Commission and the Appellant has challenged the Impugned Order on the sole ground that it was not open to the State Commission to direct the utilisation of the entire fund for creation of sub-transmission infrastructure, but some portion of the compensation amount had to be necessarily used for purchase of RECs.
- n) Respondent no.1 stated that the Impugned Order of the State Commission is a detailed order wherein the State Commission after extensive deliberations came to a conclusion that the obligated entity, being Respondent no.2 despite making efforts failed to meet the obligation under the RPPO and was liable to pay compensation in terms of the Regulation 9 of the RPPO Regulations of the State Commission and the compensation amount of Rs. 17.23 crores which became chargeable from Respondent no.2 have been allocated rightly to ensure optimal development of sub-transmission infrastructure which would facilitate the evacuation of electricity from such renewable energy projects.

- o) Respondent no.1 further submitted that no violation of the existing Regulations has been committed by the State Commission in its Impugned Order dated 10.11.2014 as it is up to the State Commission to decide the allocation of such funds collected on account of shortfall in the RPPO and keeping in view the urgent requirement of Respondent no.2 in development of sub-transmission system for providing connectivity to renewable power projects in the State, such decision on the part of the State Commission is appropriate.
7. After going through the relevant facts of this case, we are of the considered opinion that such fund should be utilized for promotion of renewable energy in the State and the State Commission while allocating the entire fund of Rs. 17.23 crores in view of the requirement projected by the Respondent no.2, the Distribution Licensee, for creation of sub-transmission for evacuation from renewable projects has not committed any violation of its Regulations.
8. After ascertaining the fact that the fund has been allocated for the development of special transmission system for providing connectivity to renewable project in the State of Himachal Pradesh,

the State Commission serve the main intent behind such Regulations since this fund utilization would provide a sub-transmission system network for the renewable projects thereby promoting the renewable energy projects in the State.

9. It is the mandate given to the State Commission since they would be in a better position to ascertain the earnest requirement for development of renewable projects in the State and it is in their wisdom that they can allocate such fund either in total or in part either to purchase RECs or for augmentation of sub-transmission system.
10. In respect of the other allegation of the Appellant that by not directing the Respondent no.2 to purchase RECs, the State Commission in its Impugned Order has overlooked the shortfall of RPPO in the FY 2013-14, the learned Counsel for the State Commission informed that shortfall in RPPO for the FY 2013-14 has to be carried forward to the next financial year and as a result the Respondent no.2 would have to comply with the obligations under the RPPO for the FY 2015-16 being specified by the State Commission after considering the shortfall in the previous FYs so as to ensure that the State of Himachal Pradesh should not suffer

on account of shortfall in the FY 2013-14 as the same was carried forward to the next financial year.

11. We have deeply deliberated upon and considered the provisions of Regulation 9 of the Himachal Pradesh Electricity Regulatory Commission (renewable power purchase obligation and its compliance) Regulations 2010. This Regulation 9 deals with the consequence of default. This Regulation 9 provides that where the obligated entity does not fulfill the renewable purchase obligation during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount, as the Commission may determine on the basis of short fall in units of RPPO and that forbearance price decided by the Central Commission provided that the funds so created shall be utilized, as may be directed by the Commission, partly for purchase of certificates and partly for development of transmission/sub-transmission infrastructure for evacuation of power from generating stations based on renewable energy sources. Thus the Commission is mandatorily required under this Regulation 9 due to insertion of a proviso therein that the fund so

created shall be utilized partly for purchase of the renewable energy certificates and partly for development of transmission or sub-transmission infrastructure, in order to promote the renewable energy generation in the State. What the Commission did in the present case, is that it directed the whole amount of compensation or default amount to be utilized for development of transmission /sub-transmission infrastructure for evacuation of power and did not allow even a fraction of the default amount for the purchase of renewable energy certificates which caused serious grievances to the appellant, which is a registered association of developers engaged in the generation of electricity through renewable energy sources such as solar, wind etc. We have considered the possible pros and cons of such kind of orders as the present one. If such kind of orders are allowed in future by any Commission then the whole default amount or the amount of compensation shall possibly be directed to be utilized for the development of transmission or sub-transmission infrastructure for evacuation of power from generating stations based on renewable energy sources and the same shall frustrate the purpose of the proviso added to Regulation 9. The strong possibility or likelihood is that if the State

Commission is allowed to pass such kind of order in future, namely directing utilization of the entire default amount or amount of compensation only for the development of transmission or sub-transmission infrastructure without allocating even a fraction of the default amount, the whole purpose of insertion of the proviso to Regulation 9 shall stand frustrated or discouraged. The purpose and intention behind insertion of Regulation 9 appears to be to give discretion to the State Commission to decide the percentage which can be directed to be utilized for purchase of renewable energy certificates by the distribution licensee from the renewable energy developers. The original purpose of such kind of Regulation was to encourage the renewable energy developers or non-conventional energy developers to continue generation of renewable energy, hence the DISCOMs were required to purchase REC, in case of shortfall in RPPO that was towards the fulfillment of the encouragement given to the renewable energy developers.

In the facts and circumstances of the present matter, we are not disturbing the Impugned Order but it shall not be treated as a precedent in future because the State Commission shall have to

consider the purpose and intention of the proviso to Regulation 9 in letter and spirit and shall decide appropriate percentage of the default amount or the compensation amount whatever name is given to that, which should be utilized for the purchase of renewable energy certificates in case of short fall of Renewable Power Purchase Obligation (RPPO) by the distribution licensee from the renewable energy developers. Thus the apprehension of the appellant Association in future on this aspect stands allayed.

ORDER

We find that the Impugned Order dated 10.11.2014 issued by the State Commission is in order. The present Appeal being no. 54 of 2015 in the light of above observation is hereby dismissed and the Impugned Order is hereby confirmed.

No order as to costs.

Pronounced in the Open Court on this **10th day of December, 2015.**

(I.J. Kapoor)
Technical Member

√

REPORTABLE/NON-REPORTABLE

mk

(Justice Surendra Kumar)
Judicial Member