

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.269 OF 2017
APPEAL No.272 OF 2017
APPEAL No.273 OF 2017
APPEAL No.275 OF 2017
APPEAL No.277 OF 2017
APPEAL No.270 OF 2017
APPEAL No.276 OF 2017
AND
APPEAL No.285 OF 2017

Dated: 30.07.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

APPEAL No. 269 OF 2017

Birla Corporation Ltd.

(Unit: Chanderia Cement Works),
Distt. Chittorgarh (Rajasthan) Pin-312021

... Appellant

Versus

1. Rajasthan Renewable Energy Corporation Limited

E-166, Yudhishtir Marg,
C-Scheme, Jaipur-302005
Through its Director (Technical)
Email: rrec_jai@yahoo.co.in

2. Rajasthan Electricity Regulatory Commission

“Vidyut Vinyamak Bhawan”,
Near State Motor Garage,
Sahakar Marg, Jaipur-302 005
Through its Secretary
Email: recjpr@yahoo.co.in

... Respondents

Counsel on record for the Appellant(s) : P.N. Bhandari
Counsel on record for the Respondent(s) : Susan Mathew for Res. 1
Raj Kumar Mehra
Himanshi Andley for Res.2

APPEAL No. 272 OF 2017

Ultratech Cement Limited

(Unit: Aditya Cement Works),
Adityapuram, Distt. Chittorgarh-312622
(Rajasthan)

... Appellant

Versus

1. Rajasthan Renewable Energy Corporation Limited

E-166, Yudhishtir Marg,
C-Scheme, Jaipur-302005
Through its Director (Technical)
Email: rrec_jai@yahoo.co.in

2. Rajasthan Electricity Regulatory Commission

“Vidyut Vinyamak Bhawan”,
Near State Motor Garage,
Sahakar Marg, Jaipur-302 005
Through its Secretary
Email: recjpr@yahoo.co.in

... Respondents

Counsel on record for the Appellant(s) : P.N. Bhandari
Counsel on record for the Respondent(s) : Susan Mathew for Res. 1
Raj Kumar Mehra
Himanshi Andley for Res.2

APPEAL No. 273 OF 2017

Mangalam Cement Limited

Morak, Dist. Kota (Raj.)
Pin – 326 520

... Appellant

Versus

1. Rajasthan Renewable Energy Corporation Limited

E-166, Yudhishtir Marg,
C-Scheme, Jaipur-302005
Through its Director (Technical)
Email: rrec_jai@yahoo.co.in

2. Rajasthan Electricity Regulatory Commission

“Vidyut Vinyamak Bhawan”,
Near State Motor Garage,
Sahakar Marg, Jaipur-302 005
Through its Secretary
Email: recjpr@yahoo.co.in

... Respondents

Counsel on record for the Appellant(s) : P.N. Bhandari

Counsel on record for the Respondent(s) : Susan Mathew for Res. 1

Raj Kumar Mehra
Himanshi Andley for Res.2

APPEAL No. 275 OF 2017

1. Suzuki Spinners (Unit-II)

(A Unit of Suzuki Textiles Ltd.)
Khari Ka lamba, Distt – Bhilwara

2. Suzuki Spinners

(A Unit of Suzuki Textiles Ltd.)
Vill-Danta Nilawari, Dist – Bhilwara

3. Suzuki Suitings

(A Unit of Suzuki Textiles Ltd.)
Vill-Danta Nilawari, Dist – Bhilwara

... Appellants

Versus

1. Rajasthan Renewable Energy Corporation Limited

E-166, Yudhishtir Marg,
C-Scheme, Jaipur-302005
Through its Director (Technical)
Email: rrec_jai@yahoo.co.in

2. Rajasthan Electricity Regulatory Commission

“Vidyut Vinyamak Bhawan”,
Near State Motor Garage,
Sahakar Marg, Jaipur-302 005
Through its Secretary
Email: recjpr@yahoo.co.in

...Respondents

Counsel on record for the Appellant(s) : P.N. Bhandari

Counsel on record for the Respondent(s) : Susan Mathew for Res. 1

Raj Kumar Mehra
Himanshi Andley for Res.2

APPEAL No. 277 OF 2017

Ultratech Cement Limited

(Unit: Kotputli Cement Works),
V & P. O. Mohanpura,
Tehsil: Kotputli Dist. Jaipur – 303108
(Rajasthan)

... Appellant

Versus

1. Rajasthan Renewable Energy Corporation Limited

E-166, Yudhishtir Marg,
C-Scheme, Jaipur-302005
Through its Director (Technical)
Email: rrec_jai@yahoo.co.in

2. Rajasthan Electricity Regulatory Commission

“Vidyut Vinyamak Bhawan”,
Near State Motor Garage,
Sahakar Marg, Jaipur-302 005
Through its Secretary
Email: recjpr@yahoo.co.in

... Respondents

Counsel on record for the Appellant(s) : P.N. Bhandari

Counsel on record for the Respondent(s) : Susan Mathew for Res. 1

Raj Kumar Mehra
Himanshi Andley for Res.2

APPEAL No. 270 OF 2017

RSWN Limited

Mayur Nagar, Village : Lodha,
Dist. Banswara (Raj.) Pin- 327001

... Appellant

Versus

1. Rajasthan Renewable Energy Corporation Limited

E-166, Yudhishtir Marg,
C-Scheme, Jaipur-302005
Through its Director (Technical)
Email: rrec_jai@yahoo.co.in

2. Rajasthan Electricity Regulatory Commission

“Vidyut Vinyamak Bhawan”,
Near State Motor Garage,
Sahakar Marg, Jaipur-302 005
Through its Secretary
Email: recjpr@yahoo.co.in

... Respondents

Counsel on record for the Appellant(s) : P.N. Bhandari

Counsel on record for the Respondent(s) : Susan Mathew for Res. 1

Raj Kumar Mehra
Himanshi Andley for Res.2

APPEAL No. 276 OF 2017

JK Tyre & Industries Limited

Kankroli, Distt. Rajsamand (Raj.)
Pin- 313342

... Appellant

Versus

1. Rajasthan Renewable Energy Corporation Limited

E-166, Yudhishtir Marg,
C-Scheme, Jaipur-302005
Through its Director (Technical)
Email: rrec_jai@yahoo.co.in

2. Rajasthan Electricity Regulatory Commission

“Vidyut Vinyamak Bhawan”,
Near State Motor Garage,
Sahakar Marg, Jaipur-302 005
Through its Secretary
Email: recjpr@yahoo.co.in

... Respondents

Counsel on record for the Appellant(s) : P.N. Bhandari

Counsel on record for the Respondent(s) : Susan Mathew for Res. 1

Raj Kumar Mehra
Himanshi Andley for Res.2

APPEAL No. 285 OF 2017

M/s ACC Ltd.

(Through its Authorised Signatory)

Having its Registered Office at:

Cement House
121 Maharshi Karve Road
Mumbai – 400 020

... Appellant

Versus

1. Rajasthan Electricity Regulatory Commission

(Through its Secretary)

Vidyut Vinyamak Bhawan
Near State Motor Garage
Sahakar Marg
Jaipur-302 001

2. Rajasthan Renewable Energy Corporation Limited

(Through its Managing Director

E-166, Yudhishtir Marg

C-Scheme,

Jaipur-302001

... Respondents

Counsel on record for the Appellant(s) : S.S. Ahluwalia

Counsel on record for the Respondent(s) : Raj Kumar Mehra
Himanshi Andley for Res.1

Susan Mathew for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Captive power plants as defined under RERC (CPP) Regulations, 2007 as well as open access consumers as defined under RERC (Terms and Conditions for Open Access) Regulations, 2004 in the State of Rajasthan, which are “obligated entities” as per the RERC (Renewable Energy Obligation) Regulations, 2007 have filed this batch of 08 appeals impugning therein the common order dated 23.03.2017 passed by 2nd respondent Rajasthan Electricity Regulatory Commission (hereinafter referred to as ‘the Commission’) in petition Nos.839/16 and 840/16 filed by the Rajasthan Renewable Energy Corporation Limited (hereinafter referred to as ‘RREC’) (1st respondent in all appeals except appeal No.285/2017 in which it has been arrayed as respondent No.2) under Section 86(1)(f) and Section 142 of the Electricity Act, 2003 read with Regulation 5 of RERC (Renewable Purchase Obligation) Regulations, 2007 as well as Regulations 7 and 9 of RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations, 2010, seeking directions against the defaulting

obligated entities including the appellants herein to pay the Renewable Energy (RE) surcharge for the shortfall in meeting the Renewable Purchase Obligations (RPO) for the period 23.03.2007 to 22.12.2010.

2. The 1st respondent is a state agency duly appointed by the Commission (2nd respondent) vide order dated 16.06.2010 for ensuring renewable energy obligation compliance as per the Regulations issued by the Commission in this regard from time to time. In the petition no. 839/16 filed before the Commission there were 33 respondents including M/s Birla Corporation Limited (appellant in appeal No.269/2017), M/s RSWM Limited (appellant in appeal No.270/2017), M/s Ultratech Cement Limited Chhattisgarh (appellant in appeal No.272/2017), M/s Ultratech Cement Limited, Jaipur (appellant in appeal No.277/2017), M/s J K Tyres and Industries Limited (appellant in appeal No.276/2017), M/s Mangalam Cement Limited (appellant in appeal No.273/2017), and M/s ACC Limited (appellant in appeal No.285/2017).

3. In the petition No.840/16 filed by 1st respondent before the Commission, there were 62 respondents out of which respondent Nos.1 to 60 were obligated entities including M/s Suzuki Spinners (appellant in appeal No.275/2017). Respondent No.61 is the authority to issue NOC to open access consumers and respondent No.62 is the authority to issue clearance certificate to captive power plants.

4. Even though, the impugned order passed by the Commission is against all the 95 obligated entities arrayed as respondents in both the petitions, only 08 of them have come in appeal before us.

5. The brief facts and circumstances leading to filing of these appeals are encapsulated hereunder: -

- i) To give effect to the objects and purpose of Section 86 (1) (e) of the Electricity Act, 2003, the Commission has framed and notified the RERC (Renewable Energy Obligation) Regulations, 2007 (hereinafter referred to as “RPO Regulations, 2007”) applicable on the electricity drawn from the Captive Power Plants and through Open Access.
- ii) RPO Regulations, 2007 imposed liability on the end users to buy minimum percentage of renewable energy. These regulations are applicable to (1) the Distribution licensees including deemed licensees, (2) Open Access Consumers and (3) Captive Power Plants of installed capacity of 1 MW and above.
- iii) The Commission, vide Regulation 4(2) of these RPO Regulations, 2007 had prescribed the RPO liability for Captive Power Plants and Open Access Consumers in the following percentage of the total energy consumed or drawn:

Sr. No.	Year	Renewable Purchase Obligation
1.	2007-2008	4.88%
2.	2008-2009	6.25%
3.	2009-2010	7.45%
4.	2010-2011	8.50%
5.	2011-2012	9.50%

- iv) Regulations 5 of these Regulations of 2007 reads as follows:

“5. Payment of Renewable Energy Surcharge for shortfall in Obligation (1) Any shortfall to meet the RE obligation shall be subject to payment of RE Surcharge by the distribution licensee, open access consumer and Captive Power Plant. The payment of renewable energy

surcharge shall be made to State transmission utility (STU). (2) The surcharge collected by STU will be credited to a fund to be utilized for creation of transmission system infrastructure of Renewable Energy power plants. (3) RE surcharge will be as notified by the Commission from time to time. For the year 2007-08 the RE surcharge shall be Rs.3.59/KWh and shall continue until revised."

- v) RE surcharge, as prescribed above, continued to be Rs. 3.59/KWh till 22.12.2010 i.e. till the Regulation 5 of RPO Regulations, 2007 was repealed by the RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations, 2010 (hereinafter referred as "RPO Compliance Regulations, 2010").

- vi) Pursuant to the provisions of the CERC (Terms and conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010, this Commission framed the RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations of 2010 which enlarged the scope of "Purchase of Renewable Energy". Further vide RPO Compliance Regulations, 2010 the Renewable Energy Certificates issued under the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable energy Generation) Regulations, 2010 were brought within the ambit of "Purchase of Renewable Energy" for discharge of the mandatory Renewable Purchase Obligations.

vii) As per these Regulations, a fiction has been created whereby one REC is issued to the RE generator for every 1 MWh of energy injected from the renewable energy sources into the grid or consumed by a Captive Power Plant. The Certificates were held as valid instrument for meeting the Renewable Purchase Obligation. The RE Generators therefore, can (1) sell the total electricity generated to the Distribution Companies or any Open Access Customers by signing PPAs or use it for its captive use, and also (2) trade/sell the Renewable Energy Certificate in the Power Exchange at an amount between the Floor Price and Forbearance Price as specified by the Central Commission at the relevant time.

viii) The RPO Regulations, 2007 were amended vide RERC (Renewable Energy Obligation) (1st Amendment) Regulations, 2011. The table existing below Regulation 4(2) of RPO Regulations, 2007 was replaced by the following table:-

“

S.No.	Year	Obligation expressed as percentage of energy consumption (%)
1	2011-12	6.00
2	2012-13	7.10
3	2013-14	8.20

”

ix) Thereafter the Regulations were further amended in the year 2014 by way of RERC (Renewable Energy Obligation) (2nd Amendment) Regulations, 2014. By way of this amendment, the table existing below Regulation 4(2) of RPO Regulations, 2007 was replaced by the following two tables: -

“(A) CPP & OA Consumers with total capacity of 10 MW & above:

S.No.	Year	Obligation expressed as percentage of energy consumption (%)		
		Non-Solar	Solar	Total
1	2014-15	7.50	1.50	9.00
2	2015-16	8.20	2.00	10.20
3	2016-17	8.90	2.50	11.40

(B) CPP & OA Consumers with capacity of 1MW and above, but less than 10MW:

S.No.	Year	Obligation expressed as percentage of energy consumption (%)
1	2014-15	9.00
2	2015-16	10.20
3	2016-17	11.40

- x) The RPO Regulations, 2007 and RPO Compliance Regulations, 2010 were challenged by various captive power plants / obligated entities including some of the respondents in the two petitions No.839/16 and 840/16 before the Hon’ble Rajasthan High Court vide various writ petitions including DB Civil Writ Petition No.2850/2007 which came to be dismissed vide order dated 31.08.2012. The Hon’ble High Court upheld the validity of both these Regulations and directed the writ petitioners to purchase minimum energy from renewable sources and to comply with their liability under the energy regulations. The Special Leave Petitions (SLPs) filed before the Hon’ble Supreme Court against the said order dated 31.08.2012 were dismissed vide order dated 13.05.2015.

- xi) Meanwhile an OP No.1/2013 was filed by Indian Wind Energy Association & Anr. against the State Electricity Regulatory Commissions before this Tribunal which was disposed off vide order dated 20.04.2015. Following directions, *inter alia*, were issued to all the State Electricity Regulatory Commissions: -

“(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 recognize 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 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 Regulations and they must act strictly in terms of their Regulations.”

- xii) After the dismissal of the SLP and in view of the directions issued by this Tribunal in OP No.1/2013, the Commission issued letter dated 28.08.2015 to the 1st respondent RREC directing it to ensure the RPO compliance by obligated entities in the State of Rajasthan. It was also directed to ensure the RPO compliance with effect from 23.03.2007 i.e. the date of notification of RPO Regulations, 2007 and to impose RE

surcharge / RPO charges on the obligated entities who were in shortfall in meeting their respective RPO targets for the period 23.03.2007 to 22.12.2010 and from 23.12.2020 to 31.03.2015. It was further directed by the Commission that in case, any obligated entity still defaulted in meeting RPO targets cumulatively up to Financial Year (FY) 2014-15, RREC shall approach the Commission by way of petition so that penal action may be taken against the defaulting obligated entities.

xiii) In pursuance of the said letter of the Commission, the 1st respondent issued demand notices dated 10.09.2015 to all the obligated entities including the appellants herein calling upon them to pay renewable energy surcharge for the shortfall in fulfilling the RPO for the above noted period either by buying renewable energy or RE certificates. Some of the obligated entities made partial compliance of the RE obligations in pursuance to the said demand notices. However, the respondents in the two petitions before the Commission including the appellants herein are stated to have failed to provide details of renewable energy generated so as to assess the shortfall as well as the RE surcharge to be imposed upon them.

6. It is in these facts and circumstances that the 1st respondent RREC approached the Commission by way of above noted two petitions bearing No. 839/16 and 840/16 with the following prayers: -

“(a) Direct the Respondents (839/16) to pay the RE surcharge, for the shortfall in complying the RE

Obligations for the period 23.03.2007 to 22.12.2010, as per the Regulations 5 of the Regulations of 2007 within one month from the date of order.

(b) Direct the Respondent Nos. 1 to 60 (840/16) to pay the RPO charge as per the provisions of Regulations 9 of the RPO Compliance Regulations of 2010 within one month from the date of order.

(c) Take/impose penal action against the Respondents as per Section 142 of the Electricity Act of 2003.

(d) Direct Respondent No. 61 of petition 840/16 i.e., SLDC not to issue NOC to the defaulting Open Access Consumers unless proof of compliance of RE Obligation till last financial year is submitted.

(e) Direct Respondent No. 62 of petition 840/16 i.e., Senior Electrical Inspector not to issue Clearance Certificate to the defaulting Captive Power Plants unless proof of compliance of RE Obligation till last financial year is submitted.”

7. On behalf of obligated entities, it was contended before the Commission that since the original RPO Regulations, 2007 has undergone several changes subsequently through Commission's notifications wherein the word "replacement" has been used for substituting the percentage of renewable purchase obligations which indicates that the earlier obligation was given a go by and therefore there was no obligation for these entities to comply with RPO prior to FY 2014-15. It was contended that by replacing the table under Regulation

4(2) of RPO Regulations, 2007 by a fresh table vide 1st Amendment in 2011 and again by a 2nd amendment in the year 2014 which mentions about RPO obligations from 2014-15 only, all earlier liabilities were dropped, and therefore, these entities were not required to comply with any RPO prior to the FY 2014-15.

8. The contentions of the obligated entities including the appellants herein did not find favour with the Commission and accordingly the Commission, vide the impugned order, allowed both the petitions and directed all the obligated entities, who had not fulfilled RPO till then, to comply with the same within a period of two months from the date of the order.

9. Accordingly, the appellants have come in appeal against the said impugned order of the Commission.

10. Before us also it is vehemently argued by the learned counsel for the appellant that use of word “replaced” in the 1st Amended Regulations of 2011 and 2nd Amended Regulations of 2014 would indicate that the table given in the Regulation 4(2) of RPO Regulations 2007 stood deleted and in its place fresh table was substituted by way of these two amendments, and therefore, liability cast upon the obligated entities by virtue of the table in Regulation 4(2) of RPO Regulations, 2007 stood wiped out. It is submitted that by virtue of 1st Amendment in the year 2011, the Commission has consciously discarded the target set out earlier vide Regulation 4(2) of RPO Regulation 2007 and fresh targets were specified with effect from the date of notification of the amending regulation i.e. 24.05.2011. He further submitted that the targets set by virtue of a fresh table given in the Regulation 4(2) of RPO Regulations

2007 by way of the said 1st Amendment in 2011 was also consciously discarded / deleted by way of 2nd amendment in the year 2014 with effect from 30.05.2014. It is the submission of the learned counsel that in view of these amendments in the RPO Regulations, 2007, the liability of the obligated entities to comply with RPO obligations started from FY 2014-15 as per the 2nd Amendment i.e. with effect from 30.05.2014 only, and therefore, the Commission has erred in directing the appellants to comply with renewable power obligations with effect from 23.03.2007. The crux of the arguments of the learned counsel is that as a result of replacement of the table given in Regulation 4(2) of RPO Regulations, 2007 by fresh table firstly by way of 1st Amendment in 2011 and secondly by way of 2nd Amendment in the year 2014, the said table cease to exist, and therefore, no liability can be fastened upon the appellants on the basis of the said table. The learned counsel further canvassed that similarly upon notification of the 2nd Amendment to the RPO Regulations, 2007 in 2014, the table substituted by way of 1st Amendment in the year 2011 also cease to exist with effect from the date of notification of the 2nd Amendment i.e. 30.05.2014. Thus, the learned counsel has urged this Tribunal to hold that the appellants are liable to comply with RPO obligations with effect from the date of notification of 2nd Amendment i.e. 30.05.2014 only and not prior to that date. Learned counsel cited judgment of the Hon'ble Supreme Court in *PTC India Limited v. Central Electricity Regulatory Commission* (2010) 4 SCC 603 in support of his submissions.

11. The submissions of the appellant's counsel are strongly refuted by the learned counsel for the 1st respondent RREC (2nd respondent in appeal No.285/2017). The learned counsel supported the impugned order of the Commission in entirety stating that it does not suffer from

any legal infirmity. It is argued that replacement of the table in the Regulation 4(2) of RPO Regulations, 2007 by way of amendments in the year 2011 and 2014 cannot be taken to mean that the liability under the said table prior to the amendments got wiped out. It is stated that the replaced tables operate with effect from the date of the respective amendments and do not affect the previous liability of the obligated entities under the previous table during the period it was operative prior to the amendments. The learned counsel cited judgment of Hon'ble Supreme Court in *State of Rajasthan v. Mangilal Pindwal* (1996) 5 SCC 60 to buttress his submissions.

12. We have considered the rival submissions of the learned counsels and have gone through the entire record including the impugned order of the Commission as well as the written submissions filed by the learned counsels.

13. In view of the above noted rival submissions of the learned counsels, it would be necessary to determine the nature of amendments carried out in RPO Regulations, 2007 by way of amendment in the years 2011 and 2014.

14. RPO Regulations of 2007 are reproduced hereunder: -

“NOTIFICATION

Jaipur, 23 March 2007

No. RERC/Secy/Reg/ 66 In exercise of the powers conferred by section 86(1) (e) read with section 181 of the Electricity Act, 2003 (Act 36 of 2003) after previous publication, the

Rajasthan Electricity Regulatory Commission makes the following Regulations, namely:

1. Short title and commencement

These regulations will be called the Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007 and will come into force from the date of their publication in the Official Gazette or 01-04-2007 whichever is later.

2. Definitions

Unless the context otherwise requires for the purpose of this part;

(1) 'Captive Power Plant' or CPP shall have meaning as assigned in RERC (Tariff for CPP) Regulations, 2007 and shall also include stand alone CPP.

(2) 'Renewable Energy' or 'RE' shall have meaning as assigned in RERC (Terms and Conditions for Determination of Tariff) Regulations, 2004 & shall include cogeneration.

(3) 'Renewable Energy Surcharge' ('RE Surcharge') means the weighted average rate of renewable energy purchased by the distribution licensee.

(4) All words and expressions appearing in these regulations shall bear the meaning assigned to them in the following order:

(a) The RERC (Tariff for CPP) Regulations, 2007.

(b) The RERC (Terms and Conditions for Open Access) Regulations, 2004.

(c) The Electricity Act 2003.

3. Applicability

These Regulations will be applicable to the following;

- (1) Distribution licensee including deemed licensee;*
- (2) Open access consumer;*
- (3) Captive Power Plant of installed capacity 1 MW and above.*

4. Renewable Energy Obligation (RE Obligation)

- (1) The RE Obligation shall be applicable on the electricity drawn from the CPP and through Open Access.*
- (2) RE Obligation for the minimum purchase of RE shall be as under;*

<i>Sr. No.</i>	<i>Year</i>	<i>Obligation expressed as % age of total energy drawn other than from distribution licensee</i>
<i>1</i>	<i>2007-08</i>	<i>4.88%</i>
<i>2</i>	<i>2008-09</i>	<i>6.25%</i>
<i>3</i>	<i>2009-10</i>	<i>7.45%</i>
<i>4</i>	<i>2010-11</i>	<i>8.50%</i>
<i>5</i>	<i>2011-12</i>	<i>9.50%</i>

(3) The RE Obligation for a distribution licensee including deemed licensee shall be governed by the Rajasthan Electricity Regulatory Commission (Power purchase & procurement process of distribution licensee) Regulations, 2004

5. Payment of Renewable Energy surcharge for short fall in Obligation

(1) Any short fall to meet the RE obligation shall be subject to payment of RE surcharge by the distribution licensee, open access consumer and Captive Power Plant. The payment of renewable energy surcharge shall be made to State Transmission Utility (STU).

(2) The surcharge collected by STU will be credited to a fund to be utilized for creation of transmission system infrastructure of Renewable Energy power plants.

(3) RE surcharge will be as notified by the Commission from time to time. For the year 2007-08 the RE surcharge shall be Rs. 3.59/kwh and shall continue until revised.

Secretary”

15. The amending Regulations of the year 2011 are as under: -

“RAJASTHAN ELECTRICITY REGULATORY
COMMISSION

NOTIFICATION

JAIPUR, 24th MAY, 2011

No.RERC/Secy./Regulation - 86

In exercise of the powers conferred under Section 181 of the Electricity Act, 2003 read with Section 86(1)(e) of that Act and all powers enabling it in that behalf, the Rajasthan Electricity Regulatory Commission, after previous publication, hereby makes the following regulations:

1. Short title and commencement

- 1) *These Regulations shall be called the Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) (1st Amendment) Regulations, 2011.*
- 2) *These Regulations shall come into force from date of publication in the State Gazette.*

2. Amendment

The table existing below regulations 4(2) of Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007 shall be replaced by the following:

<i>S.No.</i>	<i>Year</i>	<i>Obligation expressed as percentage of energy consumption (%)</i>
<i>1</i>	<i>2011-12</i>	<i>6.00</i>
<i>2</i>	<i>2012-13</i>	<i>7.10</i>
<i>3</i>	<i>2013-14</i>	<i>8.20</i>

For the purpose of this sub regulation, energy consumption shall mean ‘consumption of obligated entity’ as defined in regulation 3(g) of RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations, 2010.

*By Order of the Commission
(Ashwini Bhagat)
Secretary”*

16. The amending Regulations of the year 2014 read as under: -

“ NOTIFICATION

Jaipur, May 30, 2014.

No. RERC/Secy/Regulation-108

In exercise of the powers conferred under Section 86(1)(e) read with section 181 the Electricity Act, 2003 and all powers enabling it in this behalf the Rajasthan Electricity Regulatory Commission after previous publication, makes the following Regulations, to amend Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007, namely:

1. Short title and commencement

(1) These regulations shall be called the “Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation)(2nd Amendment) Regulations, 2014.”

(2) These Regulations shall come into force from date of publication in the Official Gazette.

2. Amendment in regulation 2:

The existing regulation 2 “Definitions” shall be replaced as under:

2 Definitions

(1) *In these regulations unless the context otherwise requires ;*

I. Captive power plants or ‘CPP’ shall have the same meaning as assigned in RERC (CPP) Regulations 2010.

II. Renewable Energy or ‘RE’ shall have meaning as assigned in RERC (Terms and Conditions for Determination of Tariff) Regulation, 2004 as amended from time to time & shall include cogeneration.

(2) *All words & expressions appearing in these regulations shall bear the same meaning assigned to them in the following order:*

(I) The RERC (CPP) Regulations, 2010

(II) The RERC (Terms and Conditions for Open Access) Regulation 2004

(III) The Electricity Act, 2003.

3 Amendment in regulation 4:

The table in existing sub regulations 4(2) shall be replaced by the following:

(A) CPP & OA Consumers with total capacity of 10 MW & above:

<i>S.No.</i>	<i>Year</i>	<i>Obligation expressed as percentage</i>
--------------	-------------	---

		<i>of energy consumption (%)</i>		
		<i>Non-Solar</i>	<i>Solar</i>	<i>Total</i>
<i>1</i>	<i>2014-15</i>	<i>7.50</i>	<i>1.50</i>	<i>9.00</i>
<i>2</i>	<i>2015-16</i>	<i>8.20</i>	<i>2.00</i>	<i>10.20</i>
<i>3</i>	<i>2016-17</i>	<i>8.90</i>	<i>2.50</i>	<i>11.40</i>

(B) CPP & OA Consumers with capacity of 1MW and above, but less than 10MW:

<i>S.No.</i>	<i>Year</i>	<i>Obligation expressed as percentage of energy consumption (%)</i>
<i>1</i>	<i>2014-15</i>	<i>9.00</i>
<i>2</i>	<i>2015-16</i>	<i>10.20</i>
<i>3</i>	<i>2016-17</i>	<i>11.40</i>

*By order
(G.K. Sharma)
Secretary”*

17. It is manifest that the table given in Regulation 4(2) of the RPO Regulations, 2007 was replaced by fresh table by way of 1st Amendment in 2011 and then again by way of 2nd Amendment in the year 2014. The table in the unamended RPO Regulations, 2007 specified the RE obligations from 2007-08 to 2011-12. This was replaced by fresh table in the year 2011 by way of 1st Amendment which specifies the RE obligations for the obligated entities from the year 2011-12 to 2013-14. Similarly, this table was replaced by a fresh table by way of 2nd Amendment in the year 2014 which specifies RE obligations for the obligated entities from the year 2014-15 to 2016-17 and came into effect on 24.05.2011. The expression used in both the amending regulations of the year 2011 and 2014 is: -

“The table existing below Regulation 4(2) of Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007 shall be replaced by the following ...”

18. The language used in the amending regulations very clearly indicates that the table in the Regulation 4(2) of RPO Regulations, 2007 was omitted / deleted and was substituted by a fresh table in its place. According to the Oxford dictionary, “replacement” means ‘substitute, oust, succeed, supersede, supplant, take the place of, change’. Therefore, the “replacement” is in no way distinct from “deletion” or “omission” followed by substitution.

19. The Supreme Court in Zile Singh Vs. State of Haryana & Ors. (2004) 8 SCC 1 has held that substitution of a provision in an enactment results in repeal of the earlier provision. It would be useful to reproduce following observation of the Hon'ble court in this regard: -

*“25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see *Principles of Statutory Interpretation, ibid., p. 565*). If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mills Assn. v. State of U.P., State of Rajasthan v. Mangilal Pindwal Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael*. In *West U.P. Sugar Mills Assn.* case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the*

old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case a three-Judge bench of this Court emphasised the distinction between “supersession” of a rule and “substitution” of a rule and held that process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.”

(Emphasis supplied)

20. It has been held by the Hon'ble Supreme Court in the judgment reported as Fibre Boards Private Limited, Bangalore Vs. Commissioner of Income Tax, Bangalore, (2015) 10 SCC 333 that an omission would amount “repeal” for the purposes of the application of Sections 6 and 24 of the General Clauses Act. It has been stated in the said judgment that since the same expression namely “repeal” is used both in Section 6 and 24 of the General Clauses Act, the construction of the said expression in both the Sections would, therefore, include within it “omission” made by the Legislature.

21. Explaining the concept further, the same bench of the Hon'ble Supreme Court in a subsequent case reported as Shree Bhagwati Steel Rolling Mills Vs. Commissioner of Central Excise & Central Excise & Anr. 2016 3 SCC 643 has held as under:-

“11. First and foremost, it is important to refer to the definition of “enactment” contained in Section 3 (19) of the General Clauses Act. The said definition clause states that “enactment” shall mean the following:

“3. (19) 'enactment' shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid.”

12. From this it is clear that when Section 6 of the General Clauses Act speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to any provision contained in any Act. Thus, it is clear that if a part of a statute is deleted, Section 6 would nonetheless apply. Secondly, it is clear, as has been stated by referring to a passage in Halsbury's Laws of England in Fibre Board judgment, that expression “omission” is nothing but a particular from of words evincing an intention to abrogate an enactment or portion thereof. This is made further clear by the Legal Thesaurus (Delux Edition) by William C. Burton, 1987 Edition. The expression “delete” is defined by the Theasurus as follows:

“Delete: Blot out, cancel, censor, cross off, cross out, cut, cut out, dele, discard, do away with, drop, edit out, efface, elide, eliminate, eradicate, erase, excise, expel, expunge, extirpate, get rid of, leave out, modify by excision, obliterate, omit, remove, rub out, rule out, scartch out, strike off, take out, weed, wipe out.

Likewise the expression “omit” is also defined by the Theasururs as follows:

“Omit:-Abstain from inserting, bypass, cast aside, count out, cut out, delete, discard, dodge, drop, exclude, fail to do, fail to include, fail to insert, fail to mention, leave out, leave undone, let go, let pass, let slip, miss. Neglect, omittere, passover, praetermittere, skip, slight, transire.”

And the expression “repeal” is defined as follows:

“Repeal:- Abolish, abrogare, abrogate, annual, avoid, cancel, countermand, declare null and void, delete, eliminate, formally withdraw, invalidate, make void negate, nullify, obliterate, officially withdraw, override, overrule, quash, recall, render invalid, rescind, rescindere, retract, reverse, revoke, set aside, vacate, void, withdraw.”

13. On a conjoint reading of the three expression “delete”, “omit”, and “repeal”, it becomes clear that “delete” and “omit” are used interchangeably, so that when the expression “repeal” refers to “delete” it would necessarily take within its ken an omission as well. This

being the case, we do not find any substance in the argument that a “repeal” amounts to an obliteration from the very beginning, whereas an “omission” is only in futuro. If the expression “delete” would amount to a “repeal”, which the appellant's counsel does not deny, it is clear that a conjoint reading of Halsbury's Laws of England and the Legal Theasurus cited hereinabove both lead to the same result, namely, that an “omission” being tantamount to a “deletion” is a form of repeal.

14. The learned counsel's second argument that Section 6-A of the General Clauses Act when it speaks of an “omission” only speaks of an “enactment” which omits and, therefore does not refer to a repeal, is equally fallacious. In Bhagat Ram Sharma v. Union of India, this Court held that there is no real distinction between a repeal and an amendment and that “amendment” is in fact a wider term which includes deletion of a provision in an existing statute. In the said judgment, this Court held: (SCC pp. 40-41, paras 17-18).

“17. It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between “repeal” and an “amendment”. In Sutherland's Statutory Construction, 3rd Edn., Vol. 1 at p. 477, the learned author makes the following statement of law:

'The distinction between repeal and amendment as these terms are used by the courts, is arbitrary. Naturally, the use of these terms by the court is based largely on how the legislatures have developed and applied these terms in labelling their enactment. When a Section is being added to an Act or a provision added to a section, the legislatures commonly entitled the Act as an amendment..... When a provision is withdrawn from a section, the legislatures call the Act an amendment particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogate and no new section is added to replace it, legislatures label the Act accomplishing this result a repeal. Thus as used by the legislatures, amendment and repeal may differ in kind – addition as opposed to withdrawal or only in degree – abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree – addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the courts, and they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal – the abrogation of an existing statutory provision – and have therefore, applied the term “implied repeal” and the rules of construction applicable to repeal to such amendments.'

18. Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and reenacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.”

(Emphasis supplied)

22. In view of the law laid down by Hon'ble Supreme Court in the aforesaid judgments, it is clear that even if the amending Regulations of 2011 and 2014 did not specifically used the word “repeal” or “delete” anywhere, omission / deletion of the table in Regulation 4(2) of unamended Regulation, 2007 can be termed as implied repeal of the said table. Further, it is not necessary that the whole enactment / regulation should be repealed, only one or more provisions in an enactment / regulation may also be repealed.

23. At this stage we find it advantageous to refer to Section 6 and 24 of the General Clauses Act, 1897 which are reproduced hereunder:-

“6. Effect of repeal. - *Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not –*

(a) *revive anything not in force or existing at the time at which the repeal takes effect; or*

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

...

24. Continuation of orders, etc., issued under enactment repealed and re-enacted. - *Where any (Central Act) or Regulation, is, after the commencement of this Act, repealed and reenacted with or without modification, then, unless it is otherwise expressly provided any (appointment notification) order, scheme,*

rule, form or bye-law, (made or) issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been (made or) issued under the provisions so reenacted, unless and until it is superseded by any (appointment notification,) order, scheme, rule, form or bye-law, (made or) issued under the provisions so re-enacted [and when any (Central Act) or Regulation, which, by a notification under section 5 of 56A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such are or part within the meaning of this section].”

24. From the plain reading of the above noted legal provisions, it is manifest that the repeal of an enactment / regulation or any provision thereof is prospective in operation unless the legislative intent appears otherwise. The expression “unless a different intention appears” appearing in the Section 6 is of very importance. It connotes that unless a different intention appears in the amending Act / regulation which repeals an enactment / regulation or a provision thereof, the repeal will not affect any liability incurred or a remedy in respect of a right acquired under the repealed provision of law. However, if a different intention can be discerned from the amending Act, such intention shall have overriding effect.

25. The Supreme Court in Shree Bhagwati Steel judgment (supra) has referred to the definition of “enactment” contained in Section 3(19) of General Clauses Act to explain that this expression includes a regulation.

26. The Supreme Court in Commissioner of Income Tax, Bangalore Vs. Venketeswara Hatchers (P) Ltd. (1999) 3 SCC 632, was concerned with an Amendment in Income Tax Act 1961 through the Finance Act 1975 which omitted Section 10 (27) granting exemption from income tax on income from poultry business and re-enacted Section 80 JJ providing the exemption of only 1/3rd of gross of total income from livestock and poultry and dairy firm. It was held in paragraph No. 12 of the judgment as under:-

“12. As noticed earlier, the omission of Section 2 (27) and re-enactment of Section 80 JJ was done simultaneously. It is a very well-recognized rule of interpretation of statute that where a provision of an Act is omitted by an Amending Act and said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of the re-enacted provision. Viewed in this background, the effect of the reenacted provision of Section 80 JJ was that profit from the business of livestock and poultry which enjoyed total exemption

under Section 10 (27) of the Act from Assessment Years 1964-65 to 1975-76 became partially exempt by way of deduction of fulfillment of certain conditions.”

(Emphasis supplied)

27. In Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors. (1994) 4 SCC 602, the Supreme Court was considering amendments to TADA Act and had culled out legal principles relevant to determining the legislative intention as to whether a law is prospective or retrospective. These principles are contained in Paragraph No. 26 of the report and are reproduced herein below: -

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerges with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:-

(i) A statute which affects substantive right is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its

application, should not be given an extended meaning and should be strictly confined to its clearly defined.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not, generally speaking, be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

(Emphasis supplied)

28. In *T. Barai vs. Henry Ah Hoe & Another* (1983) 1 SCC 177, the Hon'ble Supreme Court has discussed the scope of Section 6 of General Clauses Act and has observed:

*“18. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act though it has been specifically mentioned in the repealing Act or not, will follow, unless, as the section itself says, a different intention appears. In *State of Punjab v. Mohar Singh*, this Court has elaborately dealt*

with the effect of repeal. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. “The line of inquiry would be, not whether the new Act expressly keeps alive old rights and liabilities”, in the words of Mukherjea. J., “but whether it manifests an intention to destroy them.” The Court held that it cannot subscribe to be broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new Act and the mere absence of a saving clause is not by itself material. The Court therefore held that the provisions of Section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the General Clauses Act will apply only when a statute or regulation having the force of a statute is actually repealed. It has no application when a statute which is of a temporary nature automatically expires by efflux of

time. The principles laid down by the Court in Mohar Singh case, have consistently been followed in subsequent cases. The old doctrine of extinguishing or effacing the repealed law for all purposes and intents except for the acts past and closed has now given way to the principles enunciated by the Court in Mohar Singh case.”

(emphasis supplied)

29. Thus, in the said case also the Hon'ble Supreme Court, while relying upon the earlier judgment in Mohar Singh's case has clearly held that the provisions of Section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. It is also held that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow whether or not it has been specifically mentioned in the repealing act / legislation, unless, as the Section itself says, a different intention appears.

30. Following principles can be easily culled out from the observations made by the Hon'ble Supreme Court in the above noted judgments: -

(a) Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act, though it has been specifically mentioned in the repealing Act or not, will follow, unless, as the Section itself says, a different intention appears.

- (b) Every new enactment is presumed to be prospective in operation, unless either expressly or by necessary intendment is made retrospective. Amendment in any regulation cannot be given retrospective effect unless legislative intent or expression is clear beyond ambiguity.

- (c) Where a provision of an Act is omitted by an amending Act and said Act simultaneously reenacts the new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event, such reenactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of the re-enacted provision.

31. Coming to the instant case, it nowhere appears from the perusal of amending Regulations of 2011 and 2014 that the Commission intended to wipe out the liability of obligated entities to comply with RE obligations as specified in the table in Regulation 4(2) of RPO Regulations, 2007. A meaningful reading of these amending Regulations conveys that the intention of the Commission was to revise the percentage of minimum purchase of RE, and therefore, the table contained in unamended Regulations of 2007 was replaced by fresh table firstly in 2011 and then in 2014. It is clear from the legal principles discernible from the above referred judgments of the Hon'ble Supreme Court that the replacement of the table by way of amendments has only prospective operation and

do not affect the liability of the obligated entities prior to the amendments as per the table given in Regulation 4(2) of RPO Regulations, 2007. There is nothing in these amending Regulations of 2011 and 2014 to suggest that the liability cast upon obligated entities by way of table in unamended Regulations of 2007 cease to exist upon notification of these amending Regulations.

32. The judgment of the Hon'ble Supreme Court in PTC India case cited by the appellant's counsel do not advance the case of the appellants at all. In that case also, it has been held that the substitution of a provision results in repeal of earlier provision and its replacement by new provision. It nowhere says that upon substitution by a new provision, the earlier provision completely ceases to have effect even prior to its substitution by a new provision.

33. Hence, in the light of the above discussion, we clarify and hold that the table given in Regulation 4(2) of RPO Regulations, 2007 held the field and was operating till notification of the 1st Amendment to the Regulations on 24.05.2011 whereby the table was replaced by a fresh table. Similarly, the fresh table inserted in the said Regulation 4(2) in 2011 remained operative till it was replaced by another table by way of 2nd Amendment with effect from 30.05.2014.

34. Therefore, we do not find any error or infirmity in the impugned orders of the Commission. The appeals are devoid of any merit and are

hereby dismissed as such. Pending application(s), if any, stand disposed off.

Pronounced in the open court on this the 30th day of July, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

tp