

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

(APPELLATE JURISDICTION)

APPEAL NO. 207 OF 2013

Dated: 19th September, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF

M/s Rana Sugars Limited
Having its registered office at
SCO No. 49-50, Madhya Marg,
Sector 8-C, Chandigarh - 160009
Through its President

.... Appellant/Petitioner

VERSUS

1. Punjab State Electricity Regulatory Commission
SCO: 220-221, Sector: 34-A,
Chandigarh - 160022
Through Its Secretary
 2. State of Punjab
Through Secretary, Department of Science, Technology
and Non-conventional Energy,
Civil Secretariat, Chandigarh – 160009
 3. Punjab State Power Corporation Limited
(PSPCL), The Mall, Patiala - 147001
Through it Chairman-cum-Managing Director
 4. Punjab State Energy Development Agency
Plot No. 1 &2, Sector 33-D,
Chandigarh - 160020
Through its Director
- Respondents

Counsel for the Appellant(s) ... Mr. Vishal Gupta
Mr. Kumar Mihir

Counsel for the Respondent(s) ... Mr. Sakesh Kumar for R-1
Mr. Sunil Chaudhary for R-2 & R-4

Mr. Anand K. Ganesan and
Ms. Swapna Seshadri for R-3

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The present Appeal has been preferred by M/s Rana Sugars Limited (in short, the '**Appellant-Petitioner**'), against the impugned order, dated 24.06.2013, passed by the Punjab State Electricity Regulatory Commission (in short, the '**State Commission**') in Petition No. 46 of 2010 whereby the State Commission has held that petitioner's co-generation project is not entitled for redetermination of tariff as it has not been covered in the New and Renewable Sources of Energy (NRSE) Policy of 2012 which only allows redetermination of tariff in case of Independent Power Producers (IPPs) and Captive Power Producers (CPPs) engaged in generation of Renewable Energy.

2. The relevant facts giving rise to the present Appeal are stated as under:

- (a) that the Appellant-Rana Sugar Limited, is a company registered under the Companies Act, 1956 on 30.07.1991. The Appellant had set up a Sugar Mill and Co-generation power plant in village Buttar Seviyan, Tehsil Baba Bakala, District Amritsar in the State of Punjab. The Sugar Mill of the Appellant has a crushing capacity of 5000 MT per day and the Appellant had set up power plants of different capacities as and when the Sugar Mill was upgraded. The original power plant set up by the Appellant was of 5MW capacity in the year 1993 and, subsequently, another power plant of 6MW capacity was set up in the year 1997. Finally, with the up gradation in the crushing capacity of the Sugar Mill, the Appellant set up the present Power Plant of 12MW capacity in the year 2002.
- (b) that the Respondent No.1 is the State Electricity Regulatory Commission, Respondent No.2 is the State of Punjab, Respondent No.3 is the State Government Enterprise and a

Distribution Licensee under Section 2(17) of the Electricity Act, 2003 and the Respondent No.4 is the State Nodal Agency for promotion and development of renewable energy programmes/projects and energy conservation programme in the State of Punjab.

- (c) that prior to enactment of the Electricity Act, 2003, the Respondent No.2 (State of Punjab) issued a Policy on 12.7.2001 known as the '*New and Renewable Sources of Energy (NRSE) Policy, 2001*' inter-alia to promote development of new and renewable energy including co-generation of electricity in the State of Punjab. As per the said policy of 2001, it was stipulated that the purchase price of electricity by the Punjab State Electricity Board (PSEB) shall be Rs. 3.01 per Kwh (Base price 2000-01). Further, the annual escalation was to be payable @ 5% up to 2004-05 and no escalation was to be allowed after 2004-05.
- (d) that in accordance with the abovementioned NRSE Policy of 2001, the Appellant entered into a Power Purchase Agreement (PPA), dated 4.5.2005, with PSEB (predecessor of Respondent No.3) for sale of 10.2 MW surplus power from the 12 MW unit for a period of 20 years from the date of commencement of supply of power to PSEB i.e. 1.3.2002, which can be extended to another 10 years by mutual consent. The said Power Purchase Agreement, dated 4.5.2005, also provided in Clause 2.1.1 that "*PSEB shall continue to purchase electricity at a price of Rs. 3.01 per Unit (base year 2000-01) with 5% annual Escalation upto 2004-05. Thereafter no Escalation will be allowed during the pendency of the agreement.*"
- (e) that accordingly, the Appellant got 4 annual increments of 5% each for four years and since, 2004-05, the tariff is fixed at the rate of Rs.3.65 per unit.

- (f) that in the meantime, the Electricity Act, 2003 came into force which mandated promotion of co-generation and renewable energy. Section 3 of the Electricity Act, 2003 provides that the Central Government shall, from time to time, prepare the National Electricity Policy and Tariff Policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy. Section 4 of the Electricity Act, 2003, further, provides that the Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems (including those based on renewable sources of energy and non-conventional sources of energy) for rural areas.
- (g) that Section 61(h) of the Electricity Act, 2003 enjoins the Appropriate Commission (the Central Electricity Regulatory Commission and State Electricity Regulatory Commissions respectively) to specify terms and conditions for determination of tariff for promotion of cogeneration and generation of electricity from renewable sources of energy. Section 86(1)(e) of the Electricity Act, 2003 provide for State Electricity Regulatory Commissions to promote Co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licence. Further, Section 86(4) of Electricity Act, 2003 speaks that State Commission in discharge of its functions shall be guided by National Electricity Policy, National Electricity Plan and National Tariff Policy published under Section 3 of the Electricity Act, 2003.

- (h) that the Respondent No.2 (State of Punjab), issued/notified the New and Renewable Sources of Energy (NRSE) Policy, 2006-2011 on 24.11.2006 wherein, it allowed the tariff of Rs. 3.49 per unit (base year 2006-2007), and yearly increase of 3% for cogeneration projects and 5% for IPP Biomass projects up to 2011-12. The NRSE Policy, 2006 only allowed increment in tariff for projects which were set up under the said policy of 2006 itself and not for old plants. Thus, the NRSE Policy, 2006 only allowed increment in tariff for projects which were set up under the said policy of 2006 and there was no provision for grant of increase in tariff for plants set up under the earlier policy of 2001. In view of the same, the Tariff of the Appellant's Power Plant remained stagnant at Rs. 3.65 per Unit. Further, the said policy of 2006 also provided that *'In case of projects where MOUs/ implementation agreements have already been signed by PEDA, under the NRSE Policy 2001, but PPAs are yet to be signed by PSEB, tariff as per the NRSE Policy, 2006 shall be applicable.'*
- (i) that pursuant to the aforesaid Policy, thereafter, Respondent No.2 issued Policy Directive under Section 108 of the Electricity Act, 2003 on 16.7.2007 to the State Commission asking it to comply with the NRSE Policy, 2006 in letter and spirit.
- (j) that pursuant to the aforesaid Policy Directive, dated 16.7.2007, the State Commission adopted the tariffs provided in NRSE Policy, 2006 vide its Order, dated 13.12.2007, but observed in paragraph 5 thereof as under:
- "Accordingly, the Commission intends to align those aspects of the NRSE Policy as enunciated by the Government which come into conflict with the provisions of the Act or otherwise require clarification. These matters are dealt with in the succeeding paras."*
- Accordingly two significant deviations were made from the policy as under:-*

a) Respondent No 2 did not accept the provision below sub para (f) of para 4(ii) of Appendix II of the policy which read as under;

“At the end of the above specified escalation periods, the tariff payable shall be the last escalated tariff or the PSEB HT tariff applicable in that year which ever is higher.”

b) Respondent No 2 ordered in this regard for future escalations in para 6 (c) as under:-

“Accordingly, the Commission holds that rates as prescribed in the Policy will be applicable for a period of 5 years (upto 2011-12) after which the last escalated tariff shall continue and the Commission will determine the manner in which further enhancement in tariff, if any, by way of encouragement to the sector is to be effected.”

(k) that thereafter, the State Commission (in the year 2010 while the NRSE Policy 2006 was effective) determined generic tariffs for Renewable Power projects after analyzing the various input costs in the year of commissioning of such projects and for new projects several other schemes such as Renewable Energy Certificate (REC) mechanism were introduced by the State Commission. The Respondent No 1-State Commission also allowed generic tariffs to all the IPP, CPP and Cogeneration NRSE plants set up during the tenure of NRSE Policy 2006 by Re-opening the already signed PPAs. However, none of these were made applicable in the case of the power plant of the Appellant as it had already executed a power purchase agreement for a period of 20 years with PSEB.

(l) that since the Generic tariff determined by the State Commission for co-generation plants and other Biomass Plants was much higher than the tariff of the Appellant and the rising input cost was threatening viability of the power project of the appellant herein, the Appellant filed a Petition being Petition No. 46 of 2010 on 26.11.2010 before the State Commission

under Section 86 of the Electricity Act, 2003 for redetermination/revision of rates for sale of power from the co-generation plant of the Appellant with an aggregate capacity of 12 MW taking into account the escalation in operational cost in order to promote co-generation and generation of renewable power as envisaged under the Electricity Act, 2003, for the remaining period of the Power Purchase Agreement.

- (m) that in the meantime, the Respondent No. 2 & 4 were contemplating to come out with the New and Renewable Sources of Energy Policy for the period 2011-2016 and the Appellant with the belief that its plant will also be included in the said policy, sent a representation to them on 15.9.2011 seeking inclusion of the cogeneration project of the Appellant in the said policy appropriately for increase in its tariff. The Appellant also held meetings with the Respondent No.2 and told them about the problems faced by it due to increase in the input costs.
- (n) that the Respondent No.2 finally, on 26.12.2012, notified the New and Renewable Sources of Energy (NRSE) Policy for the period 2011-2016 to replace and supersede the Policy of 2006.
- (o) that according to the Appellant, IPPs and Captive Renewable energy Plants falling in Policy of 2001 were covered in the Policy of 2012 and redetermination of tariff for the same was allowed to enable continue their generation. However, no re-determination/re-fixation of tariff was allowed qua co-generation projects such as the project of the Appellant herein covered in the Policy of 2001.
- (p) that the State Commission, vide the impugned order, dated 24.6.2013, rejected the plea made by the appellant seeking

revision in its tariff holding that the Appellant's co-generation project is not entitled for redetermination of tariff as it has not been covered in the NRSE Policy of 2012 which only allows redetermination of tariff in case of Independent Power Producers (IPPs) engaged in generation of Renewable Energy.

- (q) that it is the impugned order, dated 24.6.2013, which has been assailed by the Appellant before us in the instant Appeal.

3. We have heard Shri Vishal Gupta, the learned counsel for the Appellant, Shri Sakesh Kumar, the learned counsel for Respondent No.1 and Shri Anand K. Ganesan, the learned counsel for Respondent No.3. We have deeply gone through the evidence and other material available on record including the impugned order passed by the State Commission and written submissions.

4. The issues arising for our consideration are as follows:

- (A) whether in terms of the NRSE Policy, 2001 and the PPA, dated 4.5.2005, entered into between the parties pursuant to the Order, dated 21.6.2004 passed by the State Commission, the Appellant is entitled to seek the redetermination of the tariff fixed for its co-generation project?
- (B) whether the State Commission has erred in rejecting the petition of the Appellant seeking re-determination of the tariff for its co-generation plant solely on the ground that it is not covered in the NRSE Policy, 2012 framed by the Respondent No.2/State of Punjab for re-determination of tariff by the State Commission as in case of IPP Biomass/Biogas power projects?
- (C) whether the exclusion of the co-generation projects such as the Project of the Appellant, covered under the NRSE Policy, 2001 from the NRSE Policy of 2012 which provides for re-determination of tariff for IPP Biomass/Biogas power projects

without any cogent reason is violative of Electricity Act, 2003, discriminatory and violative of Article 14 of the Constitution of India?

- (D) whether the NRSE Policy, 2012 is binding upon the State Commission or whether the State Commission ought to have reopened the Power Purchase Agreement of the Appellant with Respondent No.3 in the interest of promotion of co-generation and re-determined the tariff as mandated under Section 61(h) and 86(1)(e) of the Electricity Act, 2003 on the same lines as contemplated in the NRSE Policy, 2012 for Biomass/Biogas Projects of IPPs executed under 2001 Policy to enable continue their generation?

5. Since all these issues are inter-connected, we are taking and deciding them together:
6. The contentions raised on behalf of the Appellant on these issues are as under:-
- (a) that the State Commission has erred in rejecting the petition of the Appellant seeking re-determination of tariff for its co-generation plant solely on the ground that the same is not covered in the NRSE Policy, 2012 for re-determination of tariff by the State Commission as in the case of IPP Biomass/Biogas power projects.
- (b) that the NRSE Policy, 2012 gave no reason for excluding the co-generation plant covered under the NRSE Policy, 2001 and allowing re-determination of tariff for IPP Biomass/Biogas power projects only.
- (c) that this Appellate Tribunal in Appeal No. 57/2009, in the matter of Century Rayon vs MERC & Others has equated co-generation with renewable sources of energy and has clearly held that the mandate of the Electricity Act, 2003 under

Sections 61(h) and 86(1)(e) is for promotion of both co-generation and renewable energy, the relevant part of which is reproduced as under:-

“16.The Appellant is a co-generator. It produces energy more efficiently as compared to conventional power plants which is to be treated at par with the electricity from the renewable source of generation.”

- (d) that this Appellate Tribunal in Appeal No. 54 of 2012, in the matter of Emami Paper Mills vs OERC & Ors has approved the judgment of Century Rayon vs MERC & Others and has held as under:-

“18. As a matter of fact, this Tribunal in its judgment in Appeal No.57 of 2009, has specifically observed that the intention of the legislature is to clearly promote the co-generation also irrespective of the nature of the fuel used for such co-generation as well as the co-generation from renewable source. This ratio which has been decided by this Tribunal has not been taken into consideration by the State Commission.”

- (e) that the promotion of co-generation of electricity is a primary objective under the Electricity Act, 2003 and, therefore, the NRSE Policy of 2012 excluding co-generation projects without assigning any cogent reason for the same is clearly violative of the provisions of the Electricity Act,2003 as well as the National Electricity Policy and the National Tariff Policy. The State Commission ought to have rejected the said policy and allowed the plea of the appellant for re-determination of tariff at least at par with the IPP Biomass/Biogas power projects as provided in the said NRSE Policy of 2012.
- (f) that the Respondents are trying to justify the exclusion of the co-generation plants on the premises that power is a by-product of a sugar mill and, therefore, cannot be treated at par with IPP projects. The same reason has been overlooked in the case of co-generation plants set up under the NRSE Policy-2006 which have been allowed a higher tariff and have been further included in the Policy of 2012.

- (g) that the Central Electricity Regulatory Commission (CERC), in the Statement of objects and reasons for CERC (terms and conditions for tariff determination from Renewable Energy Sources) Regulations, 2012 has held as under:

“ 8.4.2 COMMISSION’S DECISION:

As regards to the Station heat rate for non- fossil fuel based cogeneration power projects, the Commission has considered that the co-generation plant design depends on cane crushing capacity and steam requirement of host sugar mill. Co-generation plant operates in a co-generation mode during crushing season and in rankine cycle mode during off-season. For the purpose of tariff determination, fuel consumption corresponding to power generation alone should be considered....”

Thus, the CERC has kept the co-generation process at par with independent power plant for the purposes of fuel consumption as it has only considered the fuel consumption corresponding to power generation alone and has excluded the portion of fuel used for generation of steam while determining the tariff. Accordingly, there is no cogent reason for excluding the co-generation plants while including the independent power plants in the NRSE Policy of 2012.

- (h) that the State Commission has erred in not appreciating that the NRSE Policy of 2006 had allowed the benefit of higher tariff in case of projects where MOUs/ implementation agreements had already been signed by PEDDA, under the NRSE Policy 2001, but PPAs were yet to be signed by PSEB. In other words, projects which had defaulted or had delayed signing of PPAs, had been granted the benefit of higher tariff as per the NRSE Policy of 2006 and later on, the Respondents allowed generic tariffs to all such projects with levelised fixed cost and variable cost with 5% escalation per year. Whereas, the projects, which had been diligent and had executed the PPAs prior to the NRSE Policy of 2006, had been punished with a lower tariff which has remained stagnant since 2004-05. Thus, such a policy which

dis-incentivises projects which are diligent cannot be termed promotional in any manner as has been mandated by the Electricity Act, 2003 and, therefore, the State Commission was duty bound to allow the Appellant's prayer seeking redetermination of the tariff for its co-generation project.

- (i) that the State Commission has erred in not appreciating that the project of the Appellant was clearly not financially viable in view of rising input costs and therefore, the rejection of the plea of the Appellant on the ground that it was not covered in the Policy of 2012 without assigning any other cogent reason for the same amount to a non-speaking order which is clearly violative of the principles of natural justice and therefore, the impugned order is liable to be set aside.
- (j) that this Appellate Tribunal in its judgment, dated 28.9.2006, in the case of Rithwik Energy Systems Ltd. vs Transmission Corporation of Andhra Pradesh Limited & Ors in Appeal No. 90/2006, reported at 2008 ELR (APTEL) 0237, held as under:

"34. A distinction, however, must be drawn in respect of a case, where the contract is re-opened for the purposes of encouraging and promoting renewable sources of energy projects pursuant to the mandate of Section 86(1)(e) of the Act, which requires the State Commission to promote cogeneration and generation of electricity from renewable sources of energy.

35. The preamble of the Act also recognizes the importance of promotion of efficient and environmentally benign policies. It is not in dispute that non-conventional sources of energy are environmentally benign and do not cause environmental degradation. Even the tariff regulations under Section 61 are to be framed in such a manner that generation of electricity from renewable sources of energy receives a boost. Para 5.12 of the National Electricity Policy pertaining to non-conventional sources of energy provides that adequate promotional measures will have to be taken for development of technologies and a sustained growth of the sources. Therefore, it is the bounden duty of the Commission to incentivize the general of energy through renewable sources of energy. PPAs can be re-opened only for the purpose of giving thrust to non-conventional energy projects and not for curtailing the incentives. The Commission, therefore, was not right in approving the principle of 30 minutes time block for measuring

energy as that was not permitted under original Clause 1.4 of the PPA and other relevant Clauses. The action of the APERC does not promote generation through non-renewable sources of energy but affects the same adversely. In case the practice of reopening of PPAs continues for curtailing the incentives or altering the conditions to the detriment of the developers of the plants based on non-conventional sources of energy, it will kill the initiative of the developers to set up such plants. The policy to incentivize generation of electricity through renewal sources of energy will be defeated. We are told that when delivered energy is calculated on the basis of 30 minutes time block principle, it is disadvantageous to the Appellants as compared to the method of computing the delivered energy by measuring it on the due date viz. 24th of each month.”

- (k) that in the light of the directions issued by this Appellate Tribunal, vide its judgment, dated 28.9.2006, the PPA can be re-opened for the purpose of giving thrust to non-conventional power projects and, therefore, the State Commission ought to have reopened the PPA of the Appellant.
- (l) that the State Commission, vide its Order, dated 26.3.2013, in Petition No. 35/2011, reopened the PPA of a biogas based power plant of Malwa Power Private Limited having a capacity of 6 MW stating that it is its bounden duty to incentivise promotion of renewable energy whereas it has rejected the same prayer of the Appellant on the ground that Appellant’s co-generation project is not covered under the NRSE Policy of 2012.
- (m) that the NRSE Policy of 2012 included power plants but excluded co-generation plants without assigning any reason for such exclusion and the impugned order is, therefore, discriminatory apart from being violative of Article 14 of the Constitution of India and the provisions of the Electricity Act, 2003.
- (n) that the State Commission has failed to appreciate that vide its order dated 13.12.2007, it had inter-alia held that the policy and the directives issued by the State Government override the

provisions of the Electricity Act, 2003 and, accordingly, the State Commission differed from the NRSE Policy of 2006 as well as the directive issued by the State Government while determining the tariff for projects covered under the said Policy of 2006. Accordingly, the State Commission ought to have considered its earlier order, dated 13.12.2007, and allowed the Appellant's plea seeking re-determination of the tariff for its co-generation project instead of rejecting the said plea on the basis that co-generation plant was not covered under NRSE Policy of 2012.

- (o) that the State Commission has failed to appreciate the fact that when a similar Co-generation Plant of Wahid Sandhar Sugar Mill, Phagwara was commissioned in April 2009, the State Commission allowed it a variable cost of Rs 3.42 and Total Tariff of Rs 5.17 per unit for the year 2012-13 and the said Co-generation Plant of Wahid Sandhar Sugar Mill is presently getting Rs 3.59 as variable cost and total tariff of Rs 5.34 per unit for 2013-14, whereas the Appellant is constrained to deliver power at total tariff of Rs 3.56 per unit when the cost for procuring the fuel from the market and the fixed cost of operation & maintenance, working capital, etc. are same for both co-generation plant of the Appellant as well as Co-generation Plant of Wahid Sandhar Sugar Mill.

Thus, the stand taken by the State Commission in passing the impugned order, is clearly contradictory, arbitrary, discriminatory and violative of the provisions of the Electricity Act, 2003.

- (p) that this Appellate Tribunal vide its judgment, dated 21.1.2014, in the matter of Tamil Nadu Electricity Consumers' Association vs Tamil Nadu Electricity Regulatory Commission & another in Appeal No. 92/2013 and 109/2013, has recently held that the State Commission in discharge of its functions under the

Electricity Act, 2003 has to be guided by the directions of the State Government under Section 108 of the Electricity Act, 2003 but the same is not mandatory and binding. The State Commission being an independent Statutory Authority is not bound by any policy directions which hampers its statutory functions. In Appeal No. 92 of 2013 and Appeal No. 109 of 2013, decided by this Tribunal vide judgment, dated 21.1.2014, the Tamil Nadu Electricity Regulatory Commission simply tried to implement the directions of the State Government by passing the impugned order without considering its own functions and powers under the Electricity Act, 2003 and its own Renewable Energy Regulations notified under the Act. and even without considering the other important issues, this Appellate Tribunal allowed the said Appeals being Appeal No. 92 of 2013 and Appeal No. 109 of 2013 while setting aside the State Commission's Order.

7. **Per-contra**, the following submissions have been made on behalf of the Respondent No.3 /Distribution Licensee:

- (a) that the Appellant is a generating company having established a 12 MW biomass based co-generating station in the State of Punjab and the main business of the Appellant is the manufacture of sugar at its sugar pant.
- (b) that the Appellant had established a 4 MW co-generation plant at its premises and entered into a Power Purchase Agreement, dated 1.6.1999, with the Respondent No.3 for supply of electricity from the said cogeneration plant, and the same was synchronized with the grid on 1.3.2002.
- (c) that Appellant claimed the said 12 MW power plant to be an extension unit of the then 4 MW power plant. Thus, the Appellant extended the unit of 4 MW power plant to 12 MW power plant and the Appellant represented the Respondent

No.3/Distribution Licensee that it had in excess capacity of 10.2 MW and was in a position to supply electricity. At the relevant time, the Government of Punjab had issued a NRSE Policy, 2001 providing for various incentives and concessions including fiscal incentives etc to the generating projects established under the said policy. The NRSE Policy, 2001 provided for the applicable tariff for old and new projects in the State of Punjab.

- (d) that the Appellant claimed the 12 MW co-generation plant to be an old project under the NRSE Policy, 2001 and filed a petition being Petition No. 11/2003 before the State Commission seeking the approval of the tariff and the PPA to be signed with the Respondent No.3 for supply of electricity from its 12 MW co-generating plant. In the said petition, the Appellant specifically claimed the tariff as was applicable under the terms of NRSE Policy, 2001 applicable for old projects and the said petition was disposed of by the State Commission vide order, dated 21.6.2004 whereby the State Commission approved the PPA and the tariff for supply of electricity by the Appellant to the Respondent No.3/Distribution Licensee.

Thus, at the instance of Appellant itself, the stand of the Appellant claiming its co-generation plant to be old one was accepted by the State Commission in its order, dated 21.6.2004, and the tariff as applicable for old projects under NRSE Policy, 2001 was approved by the State Commission. In the order, dated 21.6.2004 of the State Commission, the State Commission specifically held that the Appellant will have to supply electricity for the total period of PPA and it was to be ensured that the Appellant produces electricity using only non-conventional sources of fuel for which the project has been approved and to abide by the terms and conditions and supply the agreed quantum of power at the prescribed tariff for the tenure of the contract.

- (e) that in compliance of the order, dated 21.6.2004, passed by the State Commission, the Appellant and the Respondent No.3, entered into the PPA, dated 4.5.2005 for supply of electricity from the cogeneration plant of the Appellant to the Respondent No.3/Distribution Licensee. The PPA was effective for a period of 20 years from the date of commencement of supply of electricity by the Appellant, subject to further extension of 10 years by mutual agreement. The PPA provided for the tariff as approved by the State Commission in the order, dated 21.6.2004, namely the base tariff of Rs.3.01 per unit for the year 2000-01 with an annual escalation of 5% up to 2004-05. Thereafter, no escalation was to be allowed during the subsistence of the agreement. The escalated tariff would be applicable from the first day of April of each year and the rate would be uniform throughout the day for the entire year. No additional payment shall, on any account, be payable by the Board.
- (f) that there can be no question of re-opening of the PPA entered into between parties and redetermination of tariff in the facts of the present case. Since the State Commission, in its order, dated 21.6.2004 at the instance of the Appellant, approved the tariff for the term of the PPA and, in the circumstances, it is not open to the Appellant to seek reopening of the tariff and PPA before the State Commission.
- (g) that during the pendency of the impugned petition of the Appellant before the State Commission, seeking reopening of the tariff, the Government of Punjab also came up with NRSE Policy, 2012 wherein the State Government had recommended for redetermination of the tariff for biomass and biogas power projects which are independent power projects. The power plant of the Appellant being a cogeneration plant was not covered by the NRSE Policy of 2012 framed by the Government of Punjab. In any event, the Appellant having a subsisting and

binding PPA with the Respondent No.3 for supply of electricity at a specified tariff, there can be no question of reopening of said PPA or re-determination of tariff to the prejudice of the consumers in the State of Punjab.

- (h) that no discrimination whatsoever has been shown to the Appellant as compared to other cogeneration projects. The basic fact is that the Appellant had setup its cogeneration plant in terms of the NRSE Policy, 2001, claiming it the old project. In terms of the clear wordings of the NRSE Policy, there can be no question of giving any escalation to the cogeneration plant of the Appellant
- (i) that, as stated above, the order, dated 21.6.2004, passed by the State Commission at the instance of the Appellant in the petition filed by the Appellant claiming its cogeneration project to be old one, was fully accepted by the parties and pursuant thereto PPA, dated 4.5.2005 was executed. Now, there is no question of the Appellant seeking unilateral amendment to the said PPA or change in tariff applicable for the life of the project.
- (j) that the Appellant is wrong in relying on the order, dated 13.12.2007, passed by the State Commission in respect of the projects covered by the NRSE Policy, 2006. Even in the order, dated 13.12.2007, the State Commission had kept the tariff which had been fixed in the NRSE Policy, 2006 by the State Government as intact.
- (k) that the contention of the Appellant against the NRSE Policy, 2012 issued by the Government of Punjab and also reliance placed by the Appellant on the decision of this Appellate Tribunal in Appeal No. 57/2009 (in Century Rayon case) is misconceived as this Appellate Tribunal in the said judgment merely held that non-fossil fuel based cogeneration was also entitled to be promoted under Section 86(1)(e) of the Electricity Act, 2003.

- (l) that this Appellate Tribunal, in its Full Bench Judgment, dated 2.12.2013, in Appeal No. 53/2012 has observed as under:

“39. Summary of our findings:

Upon conjoint reading of the provisions of the Electricity Act, the National Electricity Policy, Tariff Policy and the intent of the legislature while passing the Electricity Act as reflected in the Report of the Standing Committee on Energy presented to Lok Sabha on 19.12.2002, we have come to the conclusion that a distribution company cannot be fastened with the obligation to purchase a percentage of its consumption from fossil fuel based co-generation under Section 86(1)(e) of the Electricity Act, 2003. Such purchase obligation 86(1)(e) can be fastened only from electricity generated from renewable sources of energy. However, the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc.”

- (m) that the claim of the Appellant for having the same tariff as that of regular biomass generating station is misconceived and also the reliance placed by the Appellant on the provisions of the NRSE Policy, 2006 and the Regulations framed by the Central Commission in the year 2012 are also misconceived because the Appellant had duly entered into binding and valid agreement with the Respondent No.3 for supply of electricity under the NRSE Policy, 2001 and the order passed by the State Commission.
- (n) that the Appellant has also taken advantage of all the benefits and incentives as available under the NRSE Policy, 2001. Having taken the benefit, it is now not open to the Appellant to seek variation in the said tariff which is valid and binding for the duration of the PPA.
- (o) that the Appellant is not entitled to seek re-determination of tariff on grounds of alleged financial difficulties or the unilateral claim that the project is unviable. In any event, the alleged financial difficulties being faced or the PPA becoming onerous are not grounds for interfering with the valid and binding PPA

entered into between the Appellant and the Respondent No.3/distribution licensee.

- (p) that the judgment of this Tribunal in the case of Rithwik Energy Systems Limited has no applicability to the facts of the present case.
- (q) that the Hon'ble Supreme Court in the case of Transmission Corporation of Andhra Pradesh & Another vs Sai Renewable Power Private Limited & Others reported in 2010 ELR (SC) 0697: (2011) 11 SCC 34 observed that the parties to the PPA cannot seek to avoid the obligations provided in the PPA. The Hon'ble Supreme Court has observed as under:

“86. In the present case the order dated 20.6.2001 was fully accepted by the parties without any reservation. After the lapse of more than reasonable time of their own accord they voluntarily signed the PPA which contained a specific stipulation prohibiting sale of generated power by them to third parties. The agreement also had a renewal clause empowering Transco/APTransco/Board to revise the tariff. Thus, the documents executed by these parties and their conduct of action upon such agreements over a long period, in our view, bind them to the rights and obligations stated in the contract. The parties can hardly deny the facts as they existed at the relevant time, just because it may not be convenient now to adhere to those terms. Conditions of a contract cannot be altered/avoided on presumptions or assumptions other parties have a second thought that a term of contract may not be beneficial to them at a subsequent stage. They would have to abide by the existing facts, correctness of which, they can hardly deny. Such conduct, would be by allegans contraria non est audiendus.”

- (r) that the contrary decision taken by the State Commission for other co-generation plants cannot become a ground for the tariff redetermination of the Appellant's co-generation plant because the facts and circumstances of the two are different. Further, the ground that other co-generation projects are supplying electricity at a higher tariff in the same State is not tenable or acceptable and the binding PPA relating to the Appellant cannot be reopened at this stage.

8. The following facts have been disclosed on behalf of the Respondent No.2 and Respondent No.4:

- (a) that the Appellant herein M/s Rana Sugars Limited was allowed to setup a bagasse based co-generation power plant of 12 MW capacity in their sugar mill facility located in the District Amritsar. The said co-gen plant was setup as a demonstration project under the policies of the then Ministry of Non-conventional Energy Sources (MNES), now Ministry of New and Renewable Energy (MNRE), Government of India and the Appellant signed Implementation Agreement with Respondent No.4 and, consequently, signed PA with Respondent No.3 (erstwhile Punjab State Electricity Board-PSEB) under the NRSE Policy, 2001 issued by the Government of Punjab. Under the then prevailing policies of the Government of India and Government of Punjab all the financial and fiscal benefits were extended to the power project. The total project cost is 2371.50 lakh, out of which Respondent No.4 made an equity participation of Rs.255 lakh on behalf of the State Government in the project. The then MNES, Government of India also provided a capital subsidy of Rs. 430.04 lakh and a soft loan from IREDA on payment of interest @ 9%. In addition, the Appellant was sanctioned a grant of Rs.169.96 lakh by USAID under the ABC component of the GEP project.
- (b) that after the State Commission's order, dated 21.6.2004, passed on the Appellant's Petition, the Appellant entered into a PPA on 4.5.2005 with the Respondent No.3 (erstwhile Punjab State Electricity Board-PSEB) to supply the agreed quantum of power to Respondent No.3 at the rate provided in the NRSE Policy 2001 for 20 years and the Appellant was classified under the old projects categorized under the NRSE Policy, 2001.
- (c) that there is a legal valid and binding PPA in existence between the Appellant and the Respondent No.3. When the tariff for sale

of power was beneficial to the Appellant, it continued to perform under PPA, dated 4.5.2005, and continued supply of power to Respondent No.3 and as soon as the newly commissioned projects covered under NRSE Policy 2006 and RE Tariff Regulations 2009 were given generic tariff based on normative parameters, the Appellant started evading performance under the PPA and reduced/stopped supply of power to Respondent No.3. The Appellant is seeking higher tariff through the present Appeal though his project was setup as a demonstration project with lots of subsidies/incentives from PEDDA/Government of Punjab/Government of India and its actually invested capital cost was much less than the normative cost considered for working out the generic tariff and the tariff provided in the PPA in the initial years was much above his cost of generation which was done to incentivize the then fledgling (a system that is new and without experience) NRSE Sector.

- (d) that after the CERC notified the RE Tariff Regulations 2009 and the Generic Tariffs for various Renewable Energy technologies, the Appellant filed the Petition before the State Commission in 2010 seeking for re-opening of the already signed and valid PPA and revision of tariff due to rise in the cost of fuel being used in the power plant and operations of the power plant. The Appellant further sought parity in respect of variable fuel charge worked out by the State Commission for similar co-generation plants along with annual rise to compensate the rising fuel cost on yearly basis set up by other developers under the NRSE Policy 2006. It is the said impugned petition which has been dismissed by the State Commission vide impugned order, dated 24.6.2013, after the issuance of NRSE Policy 2012 issued by the Government of Punjab.
- (e) that the State Commission had adopted the tariffs provided in the NRSE Policy 2006 for Renewable Energy Technologies with the following provision:

“Accordingly, the Commission holds that rates as prescribed in the Policy will be applicable for a period of 5 years (upto 2011-12) after which the last escalated tariff shall continue and the Commission will determine the manner in which further enhancement in tariff, if any, by way of encouragement to the sector is to be effected.”

However, no such provision was made while adopting the tariffs under the NRSE Policy 2001 and, therefore, the appellant having set-up the plant and having executed the agreement under the NRSE Policy 2001 has no right at this stage to seek revision of tariff and re-opening of the PPA.

- (f) that the Government of Punjab, subsequently issued NRSE Policy 2012 in which provision was made for review of tariff for IPP Biomass/Biogas power projects allocated by PEDDA and setup during the period of NRSE Policy, 2001 which has become stagnant per unit since 2006. Since, the co-generation project of the Appellant has not been covered under NRSE Policy 2012 for re-determination of tariff, the Appellant took-up the matter with Government of Punjab for modification of the policy also to cover co-generation projects set up during the policy period of NRSE Policy 2001 for revision of tariff by the State Commission. However, the Government of Punjab did not amend the policy and the co-generation project category of 2001-2006, are not eligible for revision of tariff as per NRSE Policy 2012 issued by the Government of Punjab.
- (g) that the main business of the Appellant is manufacture of sugar and the co-gen cycle is used primarily for generation of steam to be used in the process of manufacture of sugar. Thus, the electricity is a by-product and the co-generation mode improves the efficiency of the manufacturing cycle resulting in generation of additional power and is an additional benefit to the Appellant. Thus, keeping in view the reduced capital cost of the project due to various subsidies/ incentives the project is getting tariff at par with other similar projects during the period

2001-2006, it has already earned extra depreciation in these years.

9. **OUR ANALYSIS AND CONCLUSION:**

9.1 The following facts are undisputed in the instant matter for our purposes:

- (a) The Appellant, M/s Rana Sugars Limited had set up the present co-generation power plant in the year 2002 in village Buttar Seviyan, Tehsil Baba Bakala, District Amritsar in the State of Punjab. The Sugar Mill of the Appellant has a crushing capacity of 5000 MT per day and the Appellant had set up power plants of different capacities as and when the Sugar Mill was upgraded. The original power plant set up by the Appellant was of 5MW capacity in the year 1993 and, subsequently, another power plant of 6MW capacity was set up in the year 1997. Finally, with the up gradation in the crushing capacity of the Sugar Mill, the Appellant set up the present Power Plant of 12MW capacity in the year 2002
- (b) The Appellant claimed the 12 MW co-generation plant to be an old project under the NRSE Policy, 2001 and filed a petition being Petition No. 11/2003 before the State Commission seeking the approval of the tariff and the PPA to be signed with the Respondent No.3 for supply of electricity from its 12 MW co-generating plant specifically claiming the tariff as was applicable under the terms of NRSE Policy, 2001 for old projects. The said petition was disposed of by the State Commission vide order, dated 21.6.2004 whereby the State Commission approved the PPA and the tariff for supply of electricity by the Appellant to the Respondent No.3/Distribution Licensee
- (c) The learned State Commission in its order, dated 21.6.2004, while deciding the Petition No. 11 of 2013, clearly noted that the

project had been commissioned in March, 2002, and the project of the Appellant-Petitioner was clearly of the nature so as to justify it as an NRSE Project covered under NRSE Policy, 2001 of the Government of Punjab and the State Commission clearly held that the said co-generation project of the Appellant is to be covered as an 'old project' and is entitled to the rates for purchase of power accordingly.

- (d) In compliance of the order, dated 21.6.2004, passed by the State Commission, the Appellant and the Respondent No.3, entered into the PPA, dated 4.5.2005, for supply of electricity from the cogeneration plant of the Appellant to the Respondent No.3/Distribution Licensee and the PPA was effective for a period of 20 years from the date of commencement of supply of electricity by the Appellant, subject to further extension of 10 years by mutual agreement. The PPA provided for the tariff as approved by the State Commission in the order, dated 21.6.2004, namely the base tariff of Rs.3.01 per unit for the year 2000-01 with an annual escalation of 5% up to 2004-05. Thereafter, no escalation was to be allowed during the subsistence of the agreement.
- (e) According to the PPA, dated 4.5.2005, the Appellant got 4 annual increments of 5% each for four years and since, 2004-05, the tariff is fixed at the rate of Rs.3.65 per unit.
- (f) The Respondent No.2 (State of Punjab), issued/notified the NRSE Policy, 2006-2011 on 24.11.2006, wherein, it allowed the tariff of Rs. 3.49 per unit (base year 2006-2007), and yearly increase of 3% for cogeneration projects and 5% for Independent Power Producer (IPP) Biomass projects, which were to be set up during the tenure of the NRSE Policy, 2006 and not for old plants. Thus, the NRSE Policy, 2006 only allowed increment in tariff for projects which were set up during the tenure of NRSE Policy, 2006 and there was no provision for

grant of increase in tariff for plants which were set up under the earlier NRSE Policy, 2001.

- (g) Consequently, the Tariff of the Appellant's Co-generation Power Plant remained stagnant at Rs. 3.65 per Unit. Further, the NRSE Policy, 2006 also provided that "In case of projects where MOUs/ implementation agreements have already been signed by PEDDA, under the NRSE Policy 2001, but PPAs are yet to be signed by PSEB, tariff as per the NRSE Policy, 2006 shall be applicable".
- (h) It is pertinent to note here that pursuant to the Policy Directive, issued by the Government of Punjab, the State Commission adopted the tariffs provided in NRSE Policy, 2006 vide its Order, dated 13.12.2007, making two deviations from the said NRSE Policy, 2006, which we have mentioned above. Here we may clarify that the State Commission did not blindly or abruptly comply or followed the NRSE Policy, 2006 issued by the Government of Punjab but made significant deviation there from, as is evident from the tariff order, dated 13.12.2007, issued by the State Commission. This fact clearly shows that the State Commission did not agree in toto with the Policy Directive issued under the Electricity Act, 2003 on 16.7.2007 issued by the State Government but passed the tariff order, dated 13.12.2007 with some modifications or deviations from the State Government's directives and passed the tariff order, dated 13.12.2007.
- (i) We may further mention here that the State Commission in the year 2010, while the NRSE Policy 2006 was effective, determined generic tariffs for Renewable Power projects after analyzing the various input costs in the year of commissioning of such projects and for new projects several other schemes such as Renewable Energy Certificate (REC) mechanism were introduced by the State Commission. The State Commission

also allowed generic tariffs to all the IPP, CPP and Cogeneration NRSE plants set up during the tenure of NRSE Policy 2006 by reopening the already signed PPAs. However, none of these were made applicable in the case of the co-generation plant of the Appellant as it had already executed a power purchase agreement for a period of 20 years with Respondent No.3/Distribution Licensee (PSEB).

- (j) Since, the Generic tariff determined by the State Commission for co-generation plants and other Biomass Plants was much higher than the tariff of the Appellant and the rising input cost was threatening viability of the power project of the Appellant, the Appellant filed a Petition being Petition No. 46 of 2010 on 26.11.2010 before the State Commission under Section 86 of the Electricity Act, 2003 for redetermination/revision of rates for sale of power from the co-generation plant of the Appellant to Respondent No.3 taking into account the escalation in operational cost in order to promote co-generation and generation of renewable power as envisaged under the Electricity Act, 2003, for the remaining period of the Power Purchase Agreement, dated 4.5.2005.
- (k) When the Government of Punjab was to come out with the NRSE Policy for the period 2011-2016, the Appellant believing that its co-generation plant will also be included in the said Policy, sent a representation, dated 15.9.2011, to the State Commission seeking inclusion of its cogeneration project in the said Policy appropriately for increase in its tariff, apprising the Respondent No.2/State of Punjab about the problems faced by it due to increase in the input costs. Subsequently, the Respondent No.2 notified the NRSE Policy for the period 2011-2016 on 26.12.2012 in place of NRSE Policy, 2006.

10. We have no hesitation in noting the fact that the Appellant filed a Petition being Petition No. 46 of 2010 on 26.11.2010, before the State

Commission for redetermination of tariff for sale of power from its co-generation plant as mentioned above, but the State Commission (for the reasons best known to it) kept the petition pending till the notification of NRSE Policy, 2012 by the Government of Punjab on 26.12.2012 and after the notification of NRSE Policy, 2012, the State Commission, vide impugned order, dated 24.6.2013, rejected the said petition of the Appellant holding that the Appellant's cogeneration project is not entitled for redetermination of tariff as it has not been covered in the NRSE Policy, 2012 issued by the Government of Punjab/Respondent No.2, which only allows redetermination of tariff for Independent Power Producers (IPPs) engaged in the generation of renewable energy. There appears to be no justification in record for keeping the Petition No. 46 of 2010, filed by the Appellant, pending for more than two and a half years.

11. Now, we deem it proper to quote the relevant part of the impugned order, dated 24.6.2013, passed by the State Commission in the impugned petition, being Petition No. 46 of 2010, filed by the Appellant and the same is reproduced as under:

"11. Findings and Decision of the Commission:

The Commission in its Order dated 11.09.2011 held as under:

"The Commission observes that the Government of Punjab, Department of Science, Technology, Environment and Non-Conventional Energy is in the process of formulating a revised New and Renewable Sources of Energy (NRSE) Policy, which is likely to be notified shortly. It is expected that this policy would address the issues raised in the instant petition.

In view of this, the petition is adjourned sine die. In the mean while the petitioner may take up the matter with the department concerned, if so advised."

The Commission finds that as per the submissions of PEDA and PSPCL to the Application dated 08.03.2013 of the petitioner, the Co-generation projects, like that of the petitioner commissioned during the period of NRSE Policy, 2001 have not been included in the NRSE Policy, 2012 for re-determination of tariff by the Commission as in case of IPP Biomass/ Biogas power projects, covered in para 5.4 of the said policy. The Commission notes that neither petitioner has been able to take up the matter successfully nor PEDA, the State Nodal Agency for promotion and development of NRSE projects in the State, has been able to persuade/ convince the Government of Punjab to include the Co-generation projects like that of the petitioner, set up during NRSE Policy, 2001 and stuck up at the tariff of around Rs. 3.65 per kWh for the last many years, in the NRSE

Policy, 2012 for grant of relief by way of re-fixation of tariff as provided in para 5.4 of the said policy in the case of IPP Biomass/Biogas projects. Under the circumstances, the Commission holds that the petitioner's project, for the present, is not entitled to relief by way of re-determination of tariff for its Co-generation project. Further the alternate prayer of petitioner for foreclosure/termination of PPA is not acceded to.

The petition is dismissed without assigning any cost to either party."

12. Now, we would examine the validity or legality of the impugned order of the State Commission.

12.1 This Appellate Tribunal, in its judgment, dated 21.1.2014, in the matter of Tamil Nadu Electricity Consumers' Association vs. Tamil Nadu Electricity Regulatory Commission & another, in Appeal No. 92 of 2013 and Appeal No. 109 of 2013, has recently held that the State Commission in discharge of its function under the Electricity Act, 2003, has to be guided by the directions of the State Government under section 108 of the Electricity Act, 2003, but the same are not mandatory and binding upon the State Commission. We affirm the same view because the State Commission is an independent statutory authority vested with powers under the Electricity Act, 2003 and the Regulations and discharge the functions according to the statutory provisions, and if any direction or directive of the State Government, issued under Section 108 of the Electricity Act, 2003, is of such of a nature which hampers the statutory functions of the State Commission, the State Commission can ignore it and discharge its statutory functions according to the Act and Rules & Regulations and the State Commission is not bound by any such kind of direction or directive of the State Government issued under the Electricity Act, 2003. In the reported case, since the State Commission had simply tried to implement the directions of the State Government by passing the impugned order without considering its own functions and powers under the Electricity Act, 2003 and its own Renewable Energy Regulations notified under the Act, this Appellate Tribunal quashed the impugned order of the State Commission and allowed the Appeals.

12.2 The Full Bench of this Appellate Tribunal, in its judgment, dated 2.12.2013, in Appeal Nos. 132 of 2012 and 133 of 2012, titled as M/s Junagarh Power Projects Private Ltd. vs. Gujarat Urja Vikas Nigam Limited and others, has recently observed as under:

“34. Summary of our findings:

The State Commission has the powers to reconsider the price of biomass fuel and consequently revise the tariff of the biomass based power plants in the State in view of the circumstances of the case as the biomass plants in the State are partially closed and operating at suboptimal Plant Load Factor due to substantial increase in the price of biomass fuel and in order to avert their closure. In our opinion in the circumstances of the case, this is a fit case for the State Commission to reconsider and re-determine the biomass fuel price.

35. *In view of above, the Appeals are allowed and the matter is remanded to the State Commission for re-consideration of the biomass fuel price and consequently re-fixing of the tariff of Biomass Based Power Projects. The State Commission is directed to pass the consequential order within four months from the date of communication of this judgment. No order as to costs.”*

12.3 In the case of Full Bench judgment, a petition was filed under Sections 61(h) and 86(1)(e) of the Electricity Act, 2003 by the Appellant on the ground that substantial increase in the biomass fuel cost has affected the viability of the Appellant's project necessitating positive intervention on the part of the State Commission because fuel cost is an uncontrollable factor and variations in the cost of fuel are beyond the control of the Appellant. The Appellant filed the said petition for seeking review/redetermination of biomass fuel price, which was dismissed by the State Commission on the ground of review not being maintainable and also on the ground that the main order, dated 17.5.2010, by which the State Commission had rejected the claim of the Appellant-petitioner for increase in biomass fuel price on the ground that the Appellant had consciously agreed to the terms and conditions contained in the PPA and agreed to supply electricity at the tariff determined at the time, then the Full Bench of this Appellate Tribunal in the aforesaid Appeals considering the Appellant's plea that the prices of biomass fuel have increased substantially over the price determined for the financial year, has also recently observed as under:

*“29. In view of provisions of the Electricity Act, 2003, National Electricity Plan, Tariff Policy and the citations given above, we have come to the conclusion that the State Commission has powers to revise the tariff in a concluded PPA keeping in view the change in the circumstances of the case which are uncontrollable and revision in tariff is required to meet the objective of the Electricity Act. **The State Commission has the duty to incentivise the generation of electricity from renewable sources of energy and if the renewable energy projects are facing closure of the plants on account of abnormal rise in price of the biomass fuel than what was envisaged by the State Commission while passing the generic tariff order applicable for a long period then the State Commission could revisit the fuel price to avert closure of such plants. However, in such an intervention, the State Commission has to balance the interest of the consumers as well as the generating company. In fact the State Commission has itself in the case of Abellon Clean Energy by order dated 7.2.2011 modified the tariff determined earlier in the generic tariff order dated 17.5.2010. In the order dated 17.5.2010, there was no separate tariff for biomass projects with air-cooled condensers and a common tariff was decided irrespective of the type of cooling used. However, the State Commission re-determined the tariff decided in order dated 17.5.2010 and allowed increase in tariff for biomass plants with air cooled condenser.”***

12.4 The Full Bench of this Appellate Tribunal, at page nos. 56 & 57 thereof, has clearly observed that arranging the supply of fuel is the responsibility of the Project Developers, the price of fuel is uncontrollable factor and will vary depending on the demand and supply situation in the market which is beyond the control of the Appellants. In fact, the variable cost of fossil fuel fixed power stations is determined at the prevailing price of fuel with a provision of adjustment in terms of Fuel Cost Adjustment formula specified by the State Commission. Such adjustment in tariff on account of variation in fuel price is also admissible under Section 62(4) of the Electricity Act, 2003. This Full Bench, further observed that the biomass projects in the State are partially closed down and operating at an extremely Low Plant factor due to high price of biomass fuel which has affected their commercial viability. It has further laid down that if the Appellant accepted the generic tariff determined by the State Commission and entered into between a long term PPA for 20 years, then in the changed circumstances, if the price of biomass fuel in the market has increased to the extent that it has resulted in partial closure of the biomass plants and threat for total closure, it is the duty of the State

Commission to interfere with the tariff agreed in the PPA according to its generic tariff order, dated 17.5.2010, and re-determine the fuel price and tariff. The Full Bench has not agreed with the Respondents' contentions that no PPA can be reopened after the change of circumstances during its validity period and observed that when the PPA has been entered into for a long period of 20 years has to be differentiated from a contract where goods are supplied against a contract. One time supply of goods against a contract at less than a reasonable profit or on loss cannot be compared with a long term PPA for supply of power by a generating company where power has to be supplied for a 20 years period as it would involve sustaining operation of the generating plant for the entire period of the PPA. With the above said observation, the Full Bench remanded the matter to the State Commission for consideration of redetermination of biomass fuel price and consequently the tariff and further made it clear that they are not rendering any specific finding about what should be the price of biomass fuel. But the revised price of biomass fuel shall be applicable prospectively.

13. We find force in the contentions of the Appellant that after the PPA having been entered into and both parties having acted in terms of the PPA, dated 4.5.2005, the Appellant in the year 2010 filed a petition being Petition No. 46/2010 before the State Commission seeking redetermination of tariff for sale of power from its cogeneration project to the Respondent No.3/PSPCL for the remaining period of the PPA contending that the State Commission had provided a separate tariff by its order, dated 13.12.2007, to the projects being developed in the State of Punjab with the annual escalation for the period 2006-10, which was under the NRSE Policy, 2006 and that the Appellant had presumed that the said order was not applicable to the Appellant hence, the Appellant had not approached the State Commission. In the impugned petition, the Appellant also claimed that its project was facing financial difficulties as there was no escalation provided in the tariff after 2004-05 due to which it was necessary to re-determine the tariff.

14. We are unable to accept this contention of the Respondents that no discrimination has been shown to the project of the Appellant in passing the impugned order because the Appellant had set up a co-generation plant in terms of NRSE Policy, 2001 claiming its project as old project and in terms of the NRSE Policy, 2001, there can be no question of giving any escalation to the co-generation plant of the Appellant because the Appellant's co-generation project was set up as a demonstration project giving many incentives, financial and fiscal benefits under the then prevailing policies of the Government of India and Government of Punjab and a soft loan from IREDA, on the payment of easy interest, was also provided. Such a project, which was set up as a demonstration project at the initiative of the Government of India and Government of Punjab with the help of other bodies and even the State Commission treating the Appellant's co-generation power plant as old one vide its order, dated 21.6.2004 fixed the tariff for this co-gen project and then in pursuant of the State Commission's order, dated 21.6.2004, the aforesaid PPA, dated 4.5.2005 was entered into between the Appellant and the Respondent No. 3 (erstwhile PSEB) to supply agreed quantum of electricity to Respondent No.3 for 20 years.

15. What emerges from the material on record is that as per the PPA, dated 4.5.2005, the price of electricity supplied or sold by the Appellant, was Rs.3.01/unit base year 2000-01 with 5% annual escalation up to 2004-05 and, thereafter, no escalation was permissible. The Appellant got 4 annual increments of 5% each for four years and since, 2004-05, the tariff is fixed @ Rs.3.65 per unit and the same is stagnant since then throughout.

16. The Appellant's co-gen plant was setup as a demonstration project under the policies and assistance of Government of India and Government of Punjab and was treated as an old project under NRSE Policy, 2001 and, thereafter, in the next NRSE Policy, 2006, no arrangement was made for

the co-generation plants like that of the Appellant, which were set up under NRSE Policy, 2001. We may note that NRSE Policy, 2006 only allowed increment in tariff for the projects which were to be set up and which were set up under the tenure of NRSE Policy, 2006 and was not for old plants and, there was no provision of grant of any increase in tariff for the plants which were set up under the earlier NRSE Policy, 2001.

17. We may again observe that NRSE Policy, 2006 was not accepted or adopted in toto by the State Commission and the State Commission, after two significant deviations in the Policy directive, issued by the State Government under Section 108 of the Electricity Act, 2003, passed the tariff order, dated 13.12.2007. Thus, the State Commission, while passing the impugned order, was quite abreast or familiar with the legal position that the State Commission may differ from the State Directives issued under Section 108 of the Electricity Act, 2003 and in order to give relief and to maintain balance between consumers and the power generators, it can deviate on certain aspect from the State Directives.

18. For our convenience, we reproduce the relevant extract from the order, dated 21.6.2004, passed by the State Commission in Petition No. 11/2003 filed by the Appellant petitioner before the State Commission:

“32. If the project is an NRSE project, it should automatically be entitled to the same rates and other terms & conditions as applicable to other similarly placed NRSE projects. In that case, the fact of incorporation of the condition to the effect of power from this plant being treated as dumped power in the Letter of the Board dated March 14, 2002, also does not have any relevance to the rates allowable for power from the project. So is the case with the fact of adhoc payment @ Rs. 2.60 per kwh for this power by the Board as an interim measure. Similarly, real cost of generation of power being incurred does not have much relevance to determine the basic question of whether the project is covered under NRSE policy or not.

33. The Board has contradicted the petitioner’s version that the project should be treated as an old project under the NRSE Policy, 2001. However, the PEDDA and the Government have strongly supported the contention of the petitioner. The Commission notes that under the NRSE Policy, 2001, those projects are to be covered as old projects only if MoU/

Implementation Agreement have been signed before the date of issue of the Policy i.e. before July 24, 2001. In this case, the Commission notes that Tripartite Financial Collaboration Agreement has been signed on March 28, 2000. It has been argued by the Board that MoU and Implementation Agreement have not been signed and as such, it can not be covered under the NRSE Policy in the category of old projects. Further, it is stated that the Tripartite Financial Collaboration Agreement signed in the case is vastly different from that of MoUs and Implementation Agreements signed for other NRSE projects. The Commission notes that in this case, the project has been commissioned in March 2002. The orders for the machinery were placed between December 1999 to April 2000 i.e. well before the issue of the NRSE Policy, 2001. Sanction for Central Financial Assistance was also given on September 29, 1999 i.e. well before the issue of NRSE Policy, 2001. The Tripartite Financial Collaboration Agreement which is the main Agreement for the project indicating collaboration from the Government has also been signed on March 28, 2000 which is again well before the issue of NRSE Policy. Thus, on all these counts, the project clearly qualifies to be an old project under the NRSE Policy, 2001. The point of difference in the nature of agreements being signed for this project and other NRSE projects raised by the Board is perhaps only on account of the fact that this project involved equity participation by the Government and thus required a different format of agreement. In any case, the financial support from the Government having been received and the whole project having come up on the basis of this agreement, this fact alone cannot be used to negate the basic nature of the project.

34. In view of all above, the Commission has come to the conclusion that the project of the petitioner is clearly of the nature so as to justify it as an NRSE project. Accordingly, the same is covered under NRSE Policy 2001 of the Government of Punjab. Further in view of the facts discussed above, the project is to be covered as an 'old project' and is entitled to the rates for purchase of power accordingly.

.....

37. In view of the above, it is decided that PPA in this case be approved at the rates as applicable to the old projects as per the NRSE Policy, 2001 and as per the directions of the Government dated October 28, 2002 as amended vide their reference dated February 18, 2003 except that the clause pertaining to 5% losses be amended to state that each year only assessed transmission losses be allowed to the PSEB subject to adjustment based on actual. PEDDA & PSEB may also ensure that during the total period PPA is valid, the petitioner will produce power using only non-conventional source for which the project has been approved. Also, in order to protect the interests of the PSEB and consumers in general, PEDDA and State Govt. may take suitable steps to ensure that the petitioner continues to supply agreed quantum of power to the Board at prescribed rates during the entire period of contract under the NRSE Policy, 2001."

19. We may note that the co-generation projects, which were set up under NRSE Policy, 2001, were not covered by the NRSE Policy, 2006, issued by the Government of Punjab and the State Commission with certain deviation and modifications in the said Policy Directives of the State Government, passed the tariff order, dated 13.12.2007.

20. When the Appellant finding it difficult to run its the co-gen project, filed a Petition No. 46 of 2010 on 26.11.2010 before the State Commission under Section 86(1)(e) of the Electricity Act, 2003 for redetermination/revision of rates for sale of power from its co-generation plant to the Respondent No.3/Distribution Licensee, the same has been rejected by the State Commission by the impugned order just on the ground that the Appellant's co-generation project is not entitled for redetermination of tariff as it has not been covered in the NRSE Policy, 2012, which only allows redetermination of tariff in case of Independent Power Producers (IPPs) engaged in generation of renewable energy.

21. Here, we are dealing with a biomass based co-generation project, which was set up under NRSE Policy, 2001 notified by the Government of Punjab and we are not dealing with Independent Power Producer engaged in generation of renewable energy. This Appellate Tribunal, as we have mentioned in the upper part of the judgment, in *Rithwik Energy Systems Limited vs. Transmission Corporation of Andhra Pradesh Ltd. and ors.*, reported in 2008 ELR (APTEL) 237, clearly held that a distinction must be drawn in respect of a case where the contract is reopened for the purpose of encouraging and promoting renewable sources of energy projects pursuant to the mandate of Section 86(1) (e) of the Act which requires the State Commission to promote co-generation and generation of electricity from renewable sources of energy.

22. This Tribunal in Appeal no. 57 of 2009 in the matter of *Century Rayon* has equated co-generation with renewable sources of energy and

held that the Electricity Act, 2003 under Section 61 (h) and 86(1) (e) mandates promotion of both cogeneration and generation from renewable sources of energy.

23. This Tribunal in Full Bench judgment in Junagarh Power Projects Ltd. vs. Gujarat Urja Vikas Nigam Ltd. & Ors. in Appeal no. 132 of 2012 and 133 of 2012 held that the State Commission had powers to reconsider the price of biomass fuel and consequently revise the tariff of biomass based power plants which had entered into long term PPA with the distribution licensee as the plants were operating at sub-optimal Plant Load Factor due to substantial increase in price of biomass fuel in order to avert their closure. The State Commission in Junagarh case was directed to reconsider the biomass fuel price and consequently refix the tariff. In Junagarh case the State Commission had determined the generic tariff for the life of the biomass based projects considering the prevailing biomass fuel and an annual escalation factor. However, the actual fuel price in the market increased substantially much more than estimated by the State Commission while determining the generic tariff. The increase in price of biomass fuel in the market was beyond the control of the generating company, being an uncontrollable factor. In conventional thermal power projects also the increase in price of fuel was a pass through in determining the tariff under Section 62 of the Electricity Act, 2003.

24. The findings in Junagarh case will squarely apply to the present case where the State Commission provided for generic tariff for co-generation plants with escalation for 5 years only. The State Government in NRSE Policy provided for re-determination of tariff by the State Commission for biomass/biogas based IPPs developed under 2001 Policy for the remaining period of PPA to “enable these projects to continue generation”. The relevant paragraph of NRSE Policy, 2012 is as under:

“5.4 As per Power Purchase Agreements signed with PSEB (now PSPCL) by IPP Biomass/Biogas power projects allocated by PEDDA and set up during the period of NRSE Policy 2001, the tariff has become

stagnant at Rs. 3.49 per unit since 2006. The generic tariff as per the RE Tariff Regulation 2012 notified by CERC and adopted by PSERC for biomass power projects allows 5% annual rise in the fuel cost for the tariff period from the date of commissioning. Therefore, to enable these projects to continue generation, the tariff for these projects will be re-determined by PSERC for the remaining period of PPA”.

25. The State Government noted in the NRSE Policy 2012 that the tariff of IPP Biomass/Biogas projects set up during the period of NRSE Policy 2001 had become stagnant. The Central Commission in its 2012 Regulations has allowed escalation of 5% in the fuel cost for the tariff period from the date of commissioning of the project. Therefore, in order to enable these projects to continue generation, the tariff of the projects for the remaining period of PPA will be re-determined by the State Commission. The State Commission in the impugned order has also held that the tariff can be re-determined for IPP Biomass/biogas projects set up under NRSE Policy 2001 as per the NRSE Policy 2012. We feel that the same dispensation as provided to IPP Biomass/biogas projects set up under NRSE Policy 2001 should be given by the State Commission to the biomass based co-generation project such as that of the Appellant as it is also a renewable source of energy.

26. We feel that the State Commission was empowered to deviate from the State Government's NRSE Policy, 2012 if the directions therein were not in consonance with the provisions of the Act. As held by this Tribunal, the Act mandates promotion of both co-generation and generation from renewable sources of energy. Therefore, re-determination of tariff should not have been restricted to only IPP Biomass/Biogas Projects. In our opinion, the State Commission should have considered the petition of the Appellant for re-determination of tariff for the remaining period of PPA in view of the submission of the Appellant that the fuel cost has increased substantially due to which it was not possible to continue generation of power even on non profit basis.

27. The State Commission had fixed a single part tariff as per the State Government's NRSE Policy 2001 without going into the capital cost and operational and financial parameters required to be considered for determination of tariff. Therefore, it would now be necessary to re-determine both fixed and variable component of the tariff of the Appellant's biomass based co-generation plant by the State Commission as per the provisions of the Electricity Act, 2003 for the remaining period of the PPA. The State Commission may now determine two part tariff (fixed and variable charges) taking into consideration the actual capital cost of the 12 MW generating plant and the operational and financial norms as per the Regulations. The price of fuel for old and new co-generation projects in the State are the same, therefore, the fuel cost should be considered same as applicable to the new projects as per the Regulations/tariff orders applicable to new co-generation projects. The State Commission should also account for the subsidy/concessions granted to the Appellant by the Government/Government agencies for setting up the 12 MW project while considering the return on investment to the Appellant, so that the consumers get benefit of the same. The revised tariff should be made applicable prospectively.

28. In view of the above discussions, we come to the conclusion that the Appellant-petitioner is entitled to seek redetermination of tariff for its biomass co-generation project. We further hold that the State Commission has erred in rejecting the petition of the Appellant seeking redetermination of tariff solely on the ground that it is not covered in the NRSE Policy, 2012 framed by the Respondent No.2/State of Punjab for re-determination of tariff by the State Commission as in case of IPP Biomass/Biogas power projects. The Appellant had sought redetermination of tariff due to increase in the price of fuel as according to them the price of fuel had increased substantially while the tariff remained stagnant. When the fuel price of conventional power plants is varied as per the market rate, there is no reason to treat the cogeneration plant differently.

29. We find that the exclusion of the bagasse/biomass based co-generation projects such as that of the Appellant, from the NRSE Policy, 2012 issued by the State Government, which provides for redetermination of tariff for IPP Biomass/Biogas power projects is not in consonance with the provisions of Sections 61(h) and 86(1)(e) of the Electricity Act, 2003 and the said order appears to be suffering from illegality and cannot be allowed to stand to the extent so far as fuel cost of the Appellant's co-generation project is concerned.

30. From the above discussion, we hold that the NRSE Policy, 2012 is not binding upon the State Commission and any direction of the State Government, issued under section 108 of the Electricity Act, 2003, which hampers with discharge of statutory functions of the State Commission is also not binding upon the State Commission. **Accordingly, in view of the above findings and observations, all these issues are decided in favour of the Appellant and against the Respondents.**

31. We further hold that the Appellant-petitioner is entitled to redetermination of tariff in view of escalation in the fuel cost and the State Commission is required to decide the said petition, being Petition No. 46 of 2010 of the Appellant-petitioner in the light of the observations made by us in this judgment.

32. **SUMMARY OF OUR FINDINGS:**

32.1 The Bagasse/Biomass based co-generation projects like that of the Appellant, which were covered under NRSE Policy, 2001, were not covered by the NRSE Policy, 2006, issued by the Government of Punjab so far as the fuel cost is concerned, and they have not further been covered by the NRSE Policy, 2012, issued by the Government of Punjab. Only IPP biomass/biogas projects developed under the NRSE Policy, 2001 were included in the NRSE Policy, 2012 with provision for redetermination of their tariff by the State Commission for the remaining period of the PPA. Consequently, the tariff of the bagasse/biomass based co-generation

project of the Appellant remained fixed @ Rs. 3.65 per unit since 2004-05 without any further escalation in the fuel cost till now. Even the NRSE Policy, 2012 issued by the Government of Punjab has not covered the co-generation project of the Appellant leaving him to get fixed tariff/stagnant rate of tariff throughout the validity of the Power Purchase Agreement, dated 4.5.2005, for 20 years. Thus, the project of the Appellant has been deprived of the escalation in the fuel cost throughout the life of the Power Purchase Agreement, dated 4.5.2005. When the matter was brought to the notice of the State Commission by way of filing the petition being Petition No. 46 of 2010 by the Appellant-petitioner, the judgment in the petition was differed sine die anticipating the NRSE Policy, 2012 to be issued by the Government of Punjab at that time. After the issuance of NRSE Policy, 2012 issued by the Government of Punjab, the Petition No. 46 of 2010 seeking determination of tariff, the State Commission has dismissed the said petition of the Appellant on the ground that the co-generation project of the Appellant-petitioner has not been covered in the NRSE Policy, 2012 issued by the Government of Punjab because the NRSE Policy, 2012 only allows re-determination of tariff in case of independent power producers (IPPs) engaged in the generation of renewable energy. The exclusion of the co-generation projects like that of the Appellant, which were covered under the NRSE Policy, 2001, from the NRSE Policy, 2012, is completely illegal, unreasonable, unjust and not in consonance and conformity with the provisions of Section 61(h) and Section 86(1)(e) of the Electricity Act, 2003 because the co-generation projects like that of the Appellant, if were excluded by the NRSE Policy, 2012, issued by the Government of Punjab, it was the bounden duty of the State Commission to go into the merits of the claims of the Appellant and consider the grievances and to see the fact whether the exclusion of the co-generation projects of the Appellant from NRSE Policy, 2012 was legal, valid and reasonable in the eyes of law, which the State Commission has failed to consider in the impugned order.

32.2 The Appellant is entitled to redetermination of the tariff for its co-generation project after due consideration of the escalation or increase in

the fuel cost of the Appellant's project. This fact cannot be ignored that cost of the biomass or bagasse are constantly increasing. The Appellant is atleast entitled to the increase in the fuel cost and then redetermination of its tariff considering the reasonable and just fuel cost, as allowed to conventional projects and IPP biomass/biogas projects.

32.3 The approach of the State Commission in passing the impugned order in rejecting the petition of the Appellant seeking redetermination of tariff for its co-generation project by the State Commission, solely on the ground that the same is not covered in the NRSE Policy, 2012 framed by the Respondent No.2/Government of Punjab for redetermination of tariff cannot be said to be judicial or judicious one and cannot at all be appreciated.

32.4 The State Commission is not bound by the directives or the directions issued by the State Government under Section 108 of the Electricity Act, 2003 in the matter of redetermination, but the State Commission is to be guided by such directives of the State Government, issued under Section 108 of the Electricity Act, 2003. If any directive issued by the State Government hampers with the discharge of statutory or independent functioning of the State Commission, the State Commission is justified to ignore the same and pass the order acting as an independent and impartial Statutory Authority. It is the bounden duty of the State Commission to ensure the compliance of the provision of Section 61(h) and Section 86(1)(e) of the Electricity Act, 2003 and promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures of connectivity with the grid or sale of electricity to any person and to save the co-generation projects like that of the Appellant from closure on account of non-escalation in fuel price and proper determination of tariff based on proper fuel cost. The Full Bench judgment of this Appellate Tribunal, dated 2.12.2013, in Appeal 132 of 2012 and 133 of 2012, in the case of M/s Junagarh Power Projects Private Ltd. vs. Gujarat Urja Vikas Nigam Limited and others is relied on by us.

32.5 We further observe that substantial increase in the biomass fuel cost has affected the viability of the Appellant's co-generation project necessitating positive intervention on the part of the State Commission because the fuel cost is an uncontrollable factor and variations in the fuel cost are beyond the control of the Appellant. The State Commission has the duty to incentivize the generation of electricity from renewable sources of energy and if the renewable energy projects like that of the Appellant are facing closure of the plants or generation is being affected appreciably on account of abnormal rise in the price of biomass fuel then the State Commission can revisit the fuel price to avert closure of such plants. However, in such an intervention, the State Commission has to balance the interest of the consumers as well as the generating company. Rightly observed by the Full Bench of this Appellate Tribunal in Junagarh case that the biomass projects are partially closed down or operating at an extremely low plant load factor due to high rise in biomass fuel cost and the same has affected their commercial viability. Even if the Appellant accepted the generic tariff determined by the State Commission at the relevant time and entered into between a long term Power Purchase Agreement for 20 years, as in the case of the instant Appellant, then in the changed circumstances, if the price of biomass fuel in the market has increased to the extent it has resulted in partial closure of the biomass plants and threat for total closure, then it is the duty of the State Commission to interfere with the tariff agreed in the Power Purchase Agreement and re-determine the fuel price and tariff. We subscribe to the view adopted by the Full Bench of this Appellate Tribunal when the Full Bench did not agree with the Respondent's contentions that no Power Purchase Agreement can be reopened after change of the circumstances during its validity period. Thus, in the facts and circumstances of the present case, the State Commission should have considered the fuel price for the Appellant's bagasse/biomass based co-generation project and then determine the tariff after due consideration of the bagasse/biomass fuel price.

32.6 The State Government noted in the NRSE Policy 2012 that the tariff of IPP Biomass/Biogas projects set up during the period of NRSE Policy 2001 had become stagnant. The Central Commission in its 2012 Regulations has allowed escalation of 5% in the fuel cost for the tariff period from the date of commissioning of the project. Therefore, in order to enable these projects to continue generation, the tariff of the projects for the remaining period of PPA will be re-determined by the State Commission. The State Commission in the impugned order has also held that the tariff can be re-determined for IPP Biomass/biogas projects set up under NRSE Policy 2001 only as per the NRSE Policy 2012. We feel that the same dispensation as provided to IPP Biomass/biogas projects set up under NRSE Policy 2001 should be given by the State Commission to the biomass based co-generation project such as that of the Appellant.

32.7 We feel that the State Commission was empowered to deviate from the State Government's NRSE Policy, 2012 if the directions therein were not in consonance with the provisions of the Act. As held by this Tribunal, the Act mandates promotion of both co-generation and generation from renewable sources of energy. Therefore, re-determination of tariff should not have been restricted to only IPP Biomass/Biogas Projects. In our opinion, the State Commission should have considered the petition of the Appellant for re-determination of tariff for the remaining period of PPA in view of the submission of the Appellant that the fuel cost has increased substantially due to which it was not possible to continue generation of power even on non profit basis.

32.8 The State Commission had fixed a single part tariff as per the State Government's NRSE Policy 2001 without going into the capital cost and operational and financial parameters required to be considered for determination of tariff. Therefore, it would now be necessary to re-determine both fixed and variable component of the tariff of the Appellant's biomass based co-generation plant by the State Commission as per the

provisions of the Electricity Act, 2003 for the remaining period of the PPA. The State Commission may now determine two part tariff (fixed and variable charges) taking into consideration the actual capital cost of the 12 MW generating plant and the operational and financial norms as per the Regulations. The price of fuel for old and new co-generation projects in the State are the same, therefore, the fuel cost should be considered same as applicable to the new projects as per the Regulations/tariff orders applicable to new co-generation projects. The State Commission should also account for the subsidy/concessions granted to the Appellant by the Government/Government agencies for setting up the 12 MW project while considering the return on investment to the Appellant, so that the consumers get benefit of the same. The revised tariff should be made applicable prospectively.

33. Consequently, this Appeal being Appeal No. 207 of 2013 succeeds and is allowed and the impugned order, dated 24.06.2013, passed by the Punjab State Electricity Regulatory Commission (State Commission) in Petition No. 46 of 2010 is hereby set-aside. The matter is remanded to the State Commission for reconsideration of the bagasse/biomass fuel price of the Appellant's co-generation project and re-determine the tariff after due consideration of the fuel cost of the Appellant biomass/bagasse based co-generation project and decide the Appellant's petition being Petition No. 46 of 2010, in accordance with the observations made by us above, within four months from the date of communication of the judgment. No order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 19TH DAY OF SEPTEMBER, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ **REPORTABLE/NON-REPORTABLE**