

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated: 2nd Sept, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

APPEAL NO.31 OF 2014

In the Matter of:

Star Wire (India) Private Limited.,
8C/6 WEA, Abdul Aziz Road,
III Rd Floor, Karol Bagh,
New Delhi-110005

..... Appellant

Versus

1. Haryana Electricity Regulatory Commission
Bays No.33-36, Sector-4,
Panchkula,
Haryana-134 112

2. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6,
Panchkula,
Haryana-134 109

...Respondent(s)

Counsel for the Appellant(s) :Mr. Anand K Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s):Ms. Shikha Ohri for R-1

J U D G M E N T

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Star Wire (India) Private Limited is the Appellant herein.
2. Aggrieved by the Order dated 20.11.2013 passed by the Haryana State Commission fixing the Generic Tariff for the Bio-mass based plants and holding that the Generic Tariff prescribed for the biomass would be applied to the Appellant's Bio-mass plants after rejecting the prayer of the Appellant for determining the project specific tariff for the Appellant, the present Appeal has been filed by the Appellant.
3. The short facts are as follows:
 - (a) Star Wire (India) Private Limited is the Appellant developing a biomass based power project of 9.9. MW biomass plant in the State of Haryana.
 - (b) The Power Plant of the Appellant was commissioned on 3.5.2013 i.e. during the Year 2013-14.
 - (c) The State Commission is the First Respondent. Haryana Power Purchase Centre is the Second

Respondent. The second Respondent is engaged in the business of bulk purchase of electricity in the State of Haryana.

(d) The State Commission on 3.2.2011 notified the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligations and Renewable Energy Certificate) Regulations, 2010.

(e) This Renewable Energy Regulations, 2010 provide for the norms and parameters for determination of tariff of various renewable energy project developers. The above said Regulations were notified for the control period of 3 years. The Regulations contained the specific provisions indicating that in case Regulations for the next control period are not notified after the expiry of first control period, the tariff norms as per these Regulations shall continue to remain applicable until notification of the revised Regulations are issued subject to adjustment as per the Revised Regulations.

(f) Prior to notifying the Renewable Energy Regulations, 2010, the State Commission earlier

passed the Order on 15.5.2007 determining the tariff and related issues for the Renewable Energy based project for 2007-08 to 2012-13.

(g) Challenging the rate, some of the developers filed a Review Petition before the State Commission. The same was dismissed by the Order dated 3.10.2007.

(h) Against these orders, the project developers and distribution licensees preferred the Appeal No.113 of 2007 and 24 of 2008 respectively before this Tribunal.

(i) After hearing the parties, this Tribunal by the judgment dated 25.3.3009 remanded the matter back to the State Commission directing to hear the parties on the issues and decide the same.

(j) Pursuant to the remand order, the State Commission passed the Order dated 6.11.2009. Against this order, both the project developers and utilities filed the Appeals in Appeal No.16 of 2010 and Appeal No.117 of 2010 respectively. This Tribunal by the judgment dated 1.3.2011, partly allowed the Appeal No. 16 of 2010 filed by the project developers and remanded the matter to the State Commission

with the direction that the State Commission shall re-determine the tariff considering the Central Commission's Regulations.

(k) Pursuant to the remand, the State Commission passed the Order on 27.5.2011 re-determining the tariff for biomass based projects.

(l) In the meantime, on 3.2.2011, the State Commission notified the Renewable Energy Regulations, 2010. At this stage, the Appellant filed an Application before the State Commission for project specific determination of tariff for its biomass based power plants.

(m) The state Commission passed the order on 25.1.2012 determining the levelised generic tariff of renewable energy projects. In these proceedings of 2012 the Appellant also participated.

(n) The State Commission ultimately by the Order dated 25.1.2012 while fixing the generic tariff has rejected the prayer of the Appellant for a project specific tariff. This order dated 25.1.2012 had not been challenged by the Appellant. Thereafter, the State Commission initiated suo-motu proceedings for

determination of generic tariff for renewable energy generation of the project to be commissioned during the FY 2012-13. During the said proceedings, the Appellant filed a Petition for determination of tariff u/s 86 and 94 of the Electricity act read with Renewable Energy Regulations, 2010 praying the State Commission to review its earlier orders raising the point by fixing the project specific tariff.

(o) This Petition also was dismissed by the State Commission by the Order dated 3.9.2012. The Appellant challenged this order dated 3.9.2012 in Appeal No.249 of 2012 in this Tribunal on 18.10.2012.

(p) While this Appeal was pending, the Appellant withdrew the said Appeal with a liberty to approach the State Commission to raise some of the issues at the appropriate stage. Accordingly, by the order dated 22.2.2013, this Tribunal dismissed the Appeal as withdrawn by granting the said liberty.

(q) Thereupon, the biomass power plant of the Appellant was declared commercially operational on 3.5.2013.

(r) At this stage, suo-motu proceedings were initiated by the State Commission for determination of tariff for renewable energy plant being commissioned in the year 2013-14.

(s) The Appellant filed its detailed objections in the suo-motu proceedings. Ultimately, on 20.11.2013, the State Commission passed the Impugned Order determining the tariff for biomass plants commissioned in 2013-14 in which the very same norms had been fixed in the renewable energy Regulations, 2010 after rejecting the prayer of the Appellant for Project Specific Tariff.

(t) Aggrieved by this order dated 20.11.2013, the Appellant has filed the present Appeal before this Tribunal.

4. The learned Counsel for the Appellant has raised the following grounds in this Appeal:

(a) The Appellant sought for implementation of the Renewable Energy Regulations, 2010 in its Letter and Spirit. But, the State Commission mechanically followed the Renewable Energy Regulations, 2010 without taking note of the Second proviso to

Regualtion-4. The said proviso to Regualtion-4 clearly indicates that the 2010 Regualtions, shall continue subject to the adjustment as per revised Regulations. As per the proviso, the State Commission ought to have considered various norms and parameters like Capital Cost, Station Heat Rate, Calorific Value, Operation and Maintenance expenses etc.

(b) The State Commission ought to have determined the project specific tariff for the Appellant taking into account the cost and actual expenses incurred by the Appellant.

(c) The State Commission failed to notify a new set of Regualtions for determination of tariff for biomass based Generating Stations which were commissioned in 2013-14 after expiry of the Control Period. In the said circumstances, the State Commisison ought to have allowed appropriate adjustments and fixed the norms and parameters instead of merely applying Renewable Energy Regulations, 2010.

(d) The State Commission ought to have taken a realistic view of the matter by taking into consideration of the report of the Committee which

was adopted in the Central Commission's Amendment Regulations.

(e) The State Commission needs to be directed to frame a new set of Regulations taking into account the actual facts and situation by giving effect to the same from 1.4.2013 onwards including the plants commissioned in the Financial Year 2013-14.

(f) Since, the Appellant's plant is the only operational Bio-mass Plant in the State of Haryana, the State Commission ought not to have mechanically applied Regulations, 2010 but instead, it ought to have taken into account, the capital cost of the Appellant which was placed before the State Commission.

(g) The fact that the State Commission applied Regulations, 2010 in the Tariff Order dated 27.5.2011 and the Tariff Order dated 25.1.2012 and decided that there would be no project specific tariff in those cases has no bearing on the present case since the Appellant is only the Bio-mass power plant which has been commissioned in the year 2013-14 which has been set-up using the new Plant and machinery.

5. On these grounds, the Appellant is praying for allowing the Appeal by setting aside the Impugned Order and directing the State Commission to frame new Tariff Regulations to give effect to the same from 1.4.2013 and to pass the consequential orders.
6. In reply to the above submissions, the learned Counsel for the State Commission has made the elaborate submissions in justification of the Impugned Order pointing out the various reasonings and findings given in the Impugned Order and submitted that the Impugned Order does not warrant any interference.
7. We have heard the learned Counsel for both the parties and perused the records including the written submissions and carefully considered the same.
8. The subject matter in this Appeal is relating to the determination of the Generic Tariff for biomass based projects as well as other renewable energy projects, commissioned during the year 2013-14.
9. In the Impugned Order, the State Commission held in so far as the Appellant is concerned that the Generic Tariff

prescribed for biomass will be applied to the Appellant's biomass plants and not the project specific tariff. According to the Appellant, this finding is wrong.

10. In the light of the rival contentions of the parties, the following questions would emerge for the consideration:

(a) Whether the State Commission is duty bound to notify new Statutory Regulations for the period from 1.4.2013 in view of the specific stipulation contained in the second proviso to Regulation 4 of the Renewable Energy Regulations, 2010?

(b) Even in the absence of new Tariff Regulations, could the State Commission fix the tariff on completely unviable norms and parameters or needs to make appropriate provisions in the tariff for plants being set-up in the year 2013-14 under the 2010 Regulations?

(c) Whether as per the Renewable Energy Regulations, 2010, the revised tariff could be given effect from 01.04.2013 to plants which were commissioned in the year 2013-14?

(d) Whether the State Commission should have determined project specific tariff for the Appellant ?

11. We have heard the learned Counsel for the parties on the above issues and have given thoughtful consideration to the above submissions.
12. The principal grievance of the Appellant in the present Appeal is that the State Commission has not determined the project specific tariff for the Appellant even though the Appellant which is the only biomass project commissioned in the State, made available all the details regarding the actual cost and expenses etc., of the Appellant before the State Commission.
13. According to the Appellant the State Commission has not acted in terms of its own Renewable energy Regulations, 2010 by ignoring the second proviso of Regulation-4 and at any rate, the State Commission ought to have notified the new set of Regulations by October, 2012 but the State Commission did not carry out any such exercise and on the other hand, the State Commission has mechanically applied the tariff terms and conditions of the Regulations, 2010 which are out dated.
14. Before proceeding to deal with the questions framed above, it would be better to understand the factual background of the case. The same is as follows:

- (a) The State Commission determined the tariff for the Renewable Energy based projects for the FY 2007-08 to 2012-13 by the Order dated 15.5.2007. By this order, the State Commission determined the tariff at Rs.4/- for Biomass based power plants for the FY 2007-08 with an annual escalation of 2% from 2008-09 onwards.
- (b) This order dated 15.5.2007 was challenged by some developers and utilities in Appeal No.24 of 2008 and Appeal No.113 of 2007 respectively.
- (c) By the Judgment dated 25.3.2009, this Tribunal disposed of the above Appeals and remanded the case back to the State Commission for passing fresh orders.
- (d) Pursuant to the Remand Order, the State Commission passed the Fresh Order on 6.11.2009. This Order was also challenged by some of the Project Developers and by the Utilities in Appeal No.16 of 2010 and Appeal No.117 of 2010 respectively.
- (e) The Order dated 6.11.2009 was also set aside by the Tribunal by partly allowing the Appeal No.16 of 2010 filed by the Project Developers by the Judgment dated 1.3.2011 by remanding the matter to the State Commission with a direction that the State Commission shall determine the tariff in the light of the Central Commission's Regulations.

(f) Pursuant to this Remand Order, the State Commission passed the Order dated 27.5.2011. However, this order had not been challenged by any party.

(g) Even before the issuance of the judgment in Appeal No.16 of 2010, the State Commission notified the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff from Renewable Energy Source, Renewable Purchase Obligations and Renewable Energy Certificate) Regulations, 2010.

(h) These Regulations were framed on 3.2.2011 on the basis of the Central Commission's Tariff Regulations for Renewable Energy Source even before the judgment dated 1.3.2011 of this Tribunal.

(i) The above said Regulations were notified for a control period of 3 years with a specific provision that in case Regulations for the next control period are not notified after expiry of first control period, the above norms as per these Regulations shall continue to remain applicable until Notifications of the Revised regulations are issued subject to adjustment as per the Revised Regulations. This is provided under Regulation-4

proviso. These Regulations specify the categories of the Renewable Energy Based Projects for which the project specific tariff shall be determined by the State Commission.

(j) Apart from the specific categories, there is no provision for determination of the project specific tariff under the Regulations. After the Notifications of these Regulations, as mentioned above, the Tribunal passed a Remand Order in Appeal No.16 of 2010 on 1.3.2011 directing the State Commission to re-determine the tariff.

(k) In the light of the said judgment, the State Commission by the Order dated 27.5.2011 re-determined the tariff for sale of electricity by Bio-mass Based energy developers made to the Distribution Licensees. By this Order, the State Commission determined the tariff for a period of five years from 2011-12 to 2015-16. Thereupon, the State Commission proceeded to determine the levelized generic tariff for renewable energy projects to be commissioned during the year 2011-12. During the proceedings, the Appellant actively participated and raised the same issue of project specific tariff but the State Commission rejected the said claim by giving reasons

and determined the levelized generic tariff by the Order dated 25.1.2012.

(l) In this context, it would be appropriate to refer to the findings given in this Order dated 25.1.2012 rejecting the prayer of the Appellant for a project specific tariff. The same is as follows:

“3. Issue relating to determination of generic levellised tariff in respect of energy to be generated by the renewable power projects to be commissioned in FY 2011-12.

.....

The Commission has taken note of the views of the interveners i.e. M/s Star wire and M/s Sri Jyoti on the issues presented in the hearing and observe that the same are specific to their own proposed projects. The Commission is of the view that different projects will have different land costs, interest costs, fuel costs, GCV of fuel, depending upon type of fuel and location of the project which in turn will translate into different project specific tariff. The norms were specified in RE regulations with a view to take care of different situations relating to different renewable energy sources so that uniform tariff is determined for the projects based on same source of renewable energy. It is not feasible for the Commission while determining Generic Tariff to take into consideration project specific

parameters as availability of fuel, cost of land, cost of capital etc. may vary depending on the location of a particular project. Nonetheless, the Commission has taken into consideration the general scenario that emerges in the State, therefore, locational advantage / disadvantages cannot be avoided. The Commission expects that the project developers would take into consideration all the pros and cons while working out the viability of their project and hence ought not to seek any project specific relief”.

(m) Thus, the State Commission rejected the submissions of the Appellant regarding the determination of the project specific tariff by giving its reasons in its Order dated 25.1.2012. This order related to the years 2011-12 and 2012-13.

(n) Thereupon, the State Commission initiated suo-motu proceedings for determination of the generic tariff for renewable energy projects to be commissioned. In these proceedings also, the Appellant filed a Petition for determination of project specific tariff for its Biomass based Renewable Energy Projects u/s 86 and 94 of the Electricity Act, 2003 read with Renewable Energy Regulations, 2010. In these proceedings also, the State Commission by the order dated 3.9.2012 determined the generic tariff for the Renewable Energy Projects to be commissioned during 2012-13 after

rejecting the prayer for project specific tariff. This Order dated 3.9.2012 was challenged by the Appellant in Appeal No.249 of 2012 raising the issue of project specific tariff by questioning the findings rendered by the State Commission rejecting the same.

(o) However, the Appellant withdrew the said Appeal in Appeal No.249 of 2012 and accordingly this Tribunal dismissed the Appeal by the Order dated 22.3.2013 as withdrawn with a liberty to approach the State Commission over some of the issues at the appropriate stage.

(p) Thereupon, the Power Plant of the Appellant was declared commercially operational on 3.5.2013. However, new Regulations were not notified after the expiry of the period of 3 years of the Regulations, 2010. At that stage, the State Commission by the Order dated 20.11.2013 initiated the proceedings for determination of the levelized generic tariff for the Renewable Energy Projects to be commissioned during the FY 2013-14.

(q) The public notice was issued. The Appellant also filed objections. The Appellant reiterated its prayer for project specific tariff even though the same prayer was

rejected by the State Commission earlier in respect of the Order 2011-12 and 2012-13.

(r) Ultimately, the State Commission passed the Impugned Order on 10.11.2013 determining the Generic Tariff on the basis of the applicable Regulations namely renewable energy Regulations, 2010.

(s) Aggrieved by the Order dated 20.11.2013, the Appellant has presented the Appeal projecting its principal grievance that the State Commission has refused to determine the project specific tariff even though the actual cost and expanses of the Appellant were made available before the State Commission. Further, the Appellant, in this Appeal has placed reliance upon the draft amendments to the Central Commission's Regulations for seeking a hike on the tariff what has been determined in the Renewable Energy Regulations, 2010.

15. In the light of the above factual background of the case, let us now deal with the questions framed above.

16. According to the learned Counsel for the State Commission that the Impugned Order is a reasoned order, wherein the

tariff has been determined in accordance with the applicable Regulations.

17. Per contra, the learned Counsel for the Appellant submitted that the State Commission has not followed Regulations, 2010 in letter and spirit in the light of the Second proviso of Regulation-4.
18. At any rate, it is stated that the State Commission ought to have applied the draft amendment to the Central Commissions Regulations in the process of determination.
19. While considering the above submissions of the parties, it is worthwhile to notice as pointed out by the learned Counsel for the State Commission that the Appellant's project is using machinery based on Rankine Cycle using Water Cooled Condenser.
20. Regulation-6 of the 2010 Regulations would provide that the project specific tariff can be determined only for Bio-mass project other than that based on Rankine Cycle using Water Cooled Condenser and as such, the Appellant's Power Plant which is using the machinery based on Rankine Cycle is not eligible for a project specific tariff.
21. On this issue, the State Commission has given a finding in the Impugned Order which is as follows:

“8.2 The Commission has determined the Generic tariff for the power projects based on renewable energy sources in the State to be commissioned in FY 2013-14 in accordance with the norms prescribed in the RE regulations or approved norms. It is applicable to all such projects to be established in the State of Haryana irrespective of location, size, type of fuel used etc. The Commission has taken note of the views of M/s Star wire and M/s Saraswati Sugar Mills and observes that the same are specific to their own projects and hence cannot be generalised as such for determining generic tariff for the projects to be set up in Haryana. The Commission is of the view that different projects will have different land costs, interest costs, fuel costs, GCV of fuel, depending upon type of fuel and location of the project, which in turn will translate into different project specific tariff. The norms specified in RE regulations were with a view to take care of different situations relating to different renewable energy sources so that a uniform tariff is determined for the projects based on same source of renewable energy. It is not feasible for the Commission while determining Generic Tariff to take into consideration project specific parameters as availability of fuel, cost of land, cost of capital etc. may vary depending on the location of a particular project. Nevertheless, the Commission has taken into consideration the general scenario that emerges in the State and therefore, location specific advantages / disadvantages cannot be avoided. The Commission expects that the project developers would take into consideration all the pros and cons while working out the viability of their project and hence ought not to seek any project specific relief”.

22. In view of the above reasonings given by the State commission in the Impugned Order we find force in the submissions made by the learned Counsel for the State Commission that the Appellant's Power Plant is not eligible for project specific tariff in the instant proceedings.
23. The Appellant is now seeking the determination of the project specific tariff in the teeth of Second Proviso, Regulation-4 of the Renewable Energy Regulations, 2010. In fact, the prayer of the Appellant has been time and again rejected by the State Commission earlier by its order dated 25.1.2012 and 3.9.2012.
24. Even though the Appeal had been filed as against the Order dated 3.9.2012 in Appeal No.249 of 2012, the same was not pursued and ultimately the Appeal in which the specific issue had been raised with reference to project specific tariff had been withdrawn on 22.3.2013 and only thereafter, the Power Plant of the Appellant was declared commercially operational on 3.5.2013. Therefore, the Order passed with reference to the issue relating to the Project Specific Tariff on 3.9.2012 passed by the State Commission has attained finality.
25. The learned Counsel for the Appellant relied upon the judgment in Appeal No.93 of 2012 in the case of M/s.

Harvest Energy Private Limited Vs Madhya Pradesh Electricity Regulatory Commission rendered on 18.2.2013.

26. In this case, this Tribunal directed the Madhya Pradesh State Commission to determine the tariff for Bio-mass based Power Plant after considering the CERC Regulations as there were no State Regulations in force at that point of time.
27. The similar observation had been made by this Tribunal in Appeal No.150 of 2011 in the case of SLS Power Limited Vs APERC. In that case, the State Commission has not specified any tariff Regulations for NCE source and therefore, it was directed to consider the norms as specified in the Central Commission's Regulations while determining the tariff.
28. In the present case, the Renewable Energy Regulations, 2010 notifying the State Commission are in force. Regulation-4 provide that in case, the Regulations for the next control period are not notified until commencement of the next control period, the tariff norms as per these Regulations, 2010 shall continue to remain applicable until Notification of the revised Regulations is issued subject to the adjustments. Thus, there is already a valid and existing legislation occupying the field.

29. Under those circumstances, the Appellant cannot seek application to the proposed amendment to the Central Commission's Regulations or seek for implementation of the Central Commission's Regulations in this case.
30. In fact, this Tribunal by the judgment dated 18.4.2012 in Appeal No.102 of 2011 in the case of Haryana Vidyut Prasaran Nigam Limited Vs Haryana State Commission has specifically held that once the State Commission has notified its Regulations in accordance with the provisions of the Act, the Central Commission's Regulations would have no relevance in the matter and the State Commission has to follow its own tariff Regulations for determination of tariff for Generating Companies. The relevant observation is as follows:

“6. Bare reading of Section 61 would elucidate that the State Commissions have been mandated to frame Regulations for fixing tariff under Section 62 of the Act and while doing so i.e. while framing such Regulations, State Commissions are required to be guided by the principles laid down by the Central Commission, National Electricity Policy and Tariff Policy etc. It also provide that while framing Regulations the State Commissions shall ensure that generation, transmission and distribution are conducted on commercial principles; factors which would encourage competition and safe guard consumer's interest. Once the State Commission has

framed and notified the requisite Regulations after meeting the requirement of prior publication under Section 181(3), it is bound by such Regulations while fixing Tariff under Section 62 of the Act and the Central Commission's Regulations have no relevance in such cases".

31. In the light of the above judgement, the State Commission in the Impugned Order has acted upon in accordance with the Renewable Energy Regulations, 2010.
32. As per Regulation-7, the State Commission shall determine the generic tariff on the basis of the suo-motu Petition at least six months in advance at the beginning of each year of the control period. The State Commission accordingly determined the generic tariff applicable to the Renewable Energy Projects to be commissioned during the FY 2011-12 by its order dated 25.1.2012. In this order, the State Commission totally rejected the claim of the Appellant for a project specific tariff and held that the norms specified in the Renewable Energy Regulations were designed to ensure a uniform tariff for the project based on same source of energy.
33. As indicated above, the Appellant actively participated in the aforesaid proceedings. Even then, the Appellant did not choose to challenge the Order dated 25.1.2012.

34. On the other hand, the Appellant entered into a Power Purchase Agreement dated 22.6.2012 with the State Distribution Companies.
35. It is also to be noticed in this context that after agreeing to execute the Power Purchase Agreement, again the Appellant approached the State Commission for determination of the project specific tariff. This was also rejected by the order dated 3.9.2012. As mentioned above, though this order was challenged in Appeal No.249 of 2012, the same was withdrawn subsequently. Thus, both the orders dated 25.1.2012 and 3.9.2012 have attained finality.
36. The Appellant has now prayed that the State Commission has to be directed to frame new set of Regulations and to give effect to the same from 1.3.2014 for the plants commissioned in 2013-14. This is not the prayer originally prayed either before the State Commission or before this Tribunal in the Appeal.
37. The only prayer in the Appeal is to allow and set aside the Impugned Order dated 20.11.2013 to the extent indicated above which is challenged in the present Appeal. As such, the direction for framing of new set of Regulations is extraneous to the Appeal. As we are concerned only with the validity and legality of the Impugned Order in so far as

the Appellant is concerned, this prayer for giving such direction is not called for.

38. The Appellant further contended the words “subject to adjustment” as per revised Regulations as referred to in Regulation-4 should be applicable to the Appellant. This contention also is not tenable. The norms fixed in the 2010 Regulations have been duly indexed for arriving at the generic tariff for the FY 2013-14.
39. Therefore, further adjustments cannot be applied to the Appellant’s Power Plants in a retrospective manner.
40. The Appellant in the Written Submissions has now made a statement that the Appellant is not seeking a project specific tariff in terms of the provisions of the Renewable Energy Regulations, 2010 but, since the Appellant is the only commissioned plant in the State, the State Commission ought to have considered its actual capital cost.
41. This contention also cannot be countenanced.
42. As a matter of fact, as pointed out by the learned Counsel for the State Commission in ground (a) of the Appeal it has been specifically stated that the State Commission has erred in not determining the project specific tariff for the Appellant taking into account the cost and expanses of the Appellant.

43. The State Commission in the Impugned Order has given a detailed reasonings as to why the project specific tariff could not be determined in the present case by taking into consideration 2010 Regulations which is in force through the Impugned Order in which the findings with reference to the issue which has been rendered earlier by the Order dated 25.1.2012 as well as 3.9.2012.
44. Since, the Impugned Order does not suffer from any infirmity, the grounds urged by the Appellant assailing the Impugned Order, are not valid.
45. Consequently, there is no merit in the Appeal.

46. Summary of Our Findings

(i) The State Commission has correctly rejected the prayer of the Appellant to determine project specific tariff as against the generic tariff determined by the State Commission as per its tariff Regulations. The Appellant's Power Project is using machinery based on Rankine Cycle using Water Cooled Condenser. The Regulations provide that specific tariff can be determined only for Bio-mass projects other than based on Rankine Cycle using water cooled condenser. As

such, the Appellant is not eligible to project specific tariff.

(ii) Regulation 4 of the 2010 Renewable Energy Regulations provide that in case Regulations for the next control period are not notified until commencement of the next control period, the tariff norms as per these Regulations, 2010 should continue to remain applicable until notification of the revised Regulation is issued subject to adjustment. Thus, when there is already a valid Regulation occupying the field, there is no reason for adoption of Central Commission's present Regulations or recommendations of Committee appointed by the Central Commission.

47. In view of the above findings, we hold that there is no merit in this Appeal. Hence, this Appeal is dismissed.

48. However, there is no order as to costs.

49. Pronounced on this 2nd day of Sept'2014 in the Open Court.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 2nd Sept, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~