

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

Appeal No. 253 of 2013

Dated: 12<sup>th</sup> August, 2014

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

In the matter of:

Gujarat Biomass Energy Developers Association,  
represented by its Convenor Shri PSN Benarji,  
Snehal Park-I, Block No.A-46, Behind Collector Office,  
Near Meera Nagar, Junagadh, Junagadh District  
Pin-362001, Gujarat.

.....

Appellant

Vs.

1. Gujarat Electricity Regulatory Commission (GERC),  
represented by its Authorised Signatory,  
6<sup>th</sup> Floor, GIFT ONE,  
Road 5 C, Zone 5, GIFT City,  
Gandhinagar , Pin-382355, Gujarat.

2. Gujarat Urja Vikas Nigam Ltd. (GUVNL),  
Represented by its Authorized Signatory,  
Sardar Patel Vidyut Bhavan,  
Race Course, Vadodara-390007,  
Gujarat.

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Respondents

Counsel for the Appellant(s) : Mr. G. Umapathy

Counsel for the Respondent (s) : Ms. Suparna Srivastava for R-1  
Mr. M.G. Ramachandran &  
Mr. Anand K. Ganesan for R-2

JUDGMENT

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant appeal arises out of a generic tariff order dated 08.08.2013, vide Order No. 4 of 2013, passed by the Gujarat Electricity Regulatory Commission (for short, hereinafter called the 'State Commission') in the matter of

Determination of Tariff for Procurement of Power by the Distribution Licensees and Others from Biomass based Power Projects and Bagasse based Co-generation Projects, whereby the State Commission has determined the tariff applicable to Biomass based Power Projects and Bagasse based Co-generation Power Projects being set up in the State of Gujarat for the period from 01.08.2013 to 31.03.2016. The eligibility criteria, as per the impugned tariff order, are that the project should be commissioned on or after 01.08.2013 and the sale of power should be during the control period of the tariff order viz. 01.08.2013 to 31.03.2016.

2. The State Commission had issued a Discussion Paper and called for the comments on the same. After considering the suggestions of the stakeholders and hearing the parties, the State Commission has passed the impugned tariff order dated 08.08.2013.

3. The appellant, Gujarat Biomass Energy Developers Association, consists of three members, namely, M/s. Junagadh Power Projects Pvt. Ltd., M/s. Amreoli Power Projects Ltd., & M/s. Bhavnagar Biomass Projects Ltd. All the three members have already established their biomass based generating units in the previous tariff period and are not setting up any projects in the current tariff period, namely, 1.08.2013 - 31.03.2016.

4. The two members have already filed petitions for re-determination of tariff, which were followed by Appeal Nos. 132 and 133 of 2012 before this Appellate Tribunal and this Appellate Tribunal vide its Full Bench judgment dated 2.12.2013 has allowed the Appeals and remanded the matter to the State Commission for re-consideration of the biomass fuel price and consequently re-fixing of the tariff of biomass based power projects. This Appellate Tribunal in its Full Bench judgment dated 2.12.2013, clearly held that the State Commission had the power to re-consider the price of biomass fuel and consequently revise the

tariff of the Biomass based Power Plants in the State of Gujarat as the Biomass Plants in the State are partially closed and operating at sub-optimal plant load factor due to substantial increase in the price of biomass fuel and in order to avert their closure.

5. The third Member M/s. Bhavnagar Biomass Projects Ltd. has also filed a petition for re-determination of tariff before the State Commission which has been clubbed with the remand in the above two cases. We make it clear that no person who is setting up the project during the tariff period of the impugned tariff order dated 8.8.2013 has challenged the impugned order dated 08.08.2013 before this Tribunal.

6. The respondent no.1 is the State Regulatory Commission and respondent no.2, Gujarat Urja Vikas Nigam Ltd. (GUVNL) is a Government of Gujarat Enterprise and a Company incorporated under the Companies Act, 1956. GUVNL has succeeded to the business of bulk purchase and sale of electricity earlier undertaken by the Gujarat Electricity Board. GUVNL also undertakes the co-ordination and facilitation of the activities of its six subsidiary companies.

7. The Appellant Association has challenged the impugned order dated 08.08.2013, on account of the failure of the State Commission to consider the ground realities in fixing the various components viz- (i) Station Heat Rate (SHR), (ii) Gross Calorific Value (GCV), (iii) Operation & Maintenance (O & M) Expenses, (iv) Auxiliary Consumption, (v) Biomass Fuel Cost and (vi) Plant Load Factor (PLF).

8. The main issues, as raised by the appellant in the present appeal, are as follows:

- (i) Whether the new tariff determined by the impugned order dated 8.8.2013 passed by the State Commission is applicable to the three existing biomass generating stations of the three members of the Appellant Association in Gujarat?
- (ii) Whether the State Commission is mandated to follow the Report of the Committee constituted by the Central Electricity Regulatory Commission, dated August, 2013, which committee has recommended certain norms for biomass projects?

9. Before we proceed in this matter, it is necessary to be mentioned that the judgment dated 2.12.2013 passed by this Appellate Tribunal in Appeal Nos. 132 & 133 of 2012 has been challenged before the Hon'ble Supreme Court by Gujarat Urja Vikas Nigam Ltd., who is respondent no.2 before us, in Civil Appeal Nos. 1973-1974 of 2014 titled as Gujarat Urja Vikas Nigam Ltd. Vs. Junagarh Power Projects Ltd. & Ors. and the Hon'ble Supreme Court, vide order dated 28.02.2014, has admitted the appeals and issued notice on the applications for stay directing that in the meantime the proceedings may continue but the State Commission will not pass the final order with regard to the fixation of tariff. Thus, our judgment dated 2.12.2013 is under challenge before the Hon'ble Supreme Court at the instance of respondent no.2 and the State Commission has been restrained from passing any final order regarding fixation of tariff in the meantime.

10. The preliminary objection raised on behalf of the respondent – State Commission as to the maintainability of the appeal is that the impugned tariff order dated 8.8.2013 of the State Commission is not applicable to the members of the Appellant Association since their projects have been set up prior to the control period and they are covered by the order dated 2.12.2013 passed by this Appellate Tribunal in Appeal Nos. 132 & 133 of 2012.

11. According to the Appellant Association, the new tariff order dated 8.8.2013 (impugned order) should also apply to the Biomass Plants already set up because the State Commission ought to be guided by the ground realities or in the alternative apply the CERC generic renewable energy tariff order for the year 2012-13 and evolve a mechanism so that the reasonable recovery of cost of generation of electricity is made by producers so that the industry could sustain and also the requirement of electricity could be met. The three members of the Appellant Association, who have existing PPAs, are almost on the verge of closing down their units since they are not able to sustain the cost beside erosion of capital. Until and unless the revised tariff is extended to the existing PPAs, the said industry would not be able to sustain the generation of electricity. It is imperative for the State Commission and its instrumentalities to ensure that the revised tariff should be given effect to even in the cases of existing PPAs.

12. After considering the rival submissions made by the parties on the preliminary point of maintainability of the instant appeal, we do not find any merit in the submission of the respondents that the three members of the Appellant Association are not aggrieved parties against the impugned tariff order because after the Full Bench judgment dated 02.12.2013 of this Appellate Tribunal in Appeal Numbers 132 of 2012 and 133 of 2012, they have already filed petitions for re-determination of tariff before the State Commission and the same are tagged with the matter remanded by the Full Bench judgment of this Tribunal dated 02.12.2013. Since the judgment dated 02.12.2013 of this Tribunal has been challenged before the Hon'ble Supreme Court in Civil Appeal Nos. 1973-1974 of 2014 filed by the respondent no.2- Gujarat Urja Vikas Nigam Limited and the Hon'ble Supreme Court, vide interim order dated 28.02.2014, after admitting the appeals and granting time for filing reply, has directed the State Commission to continue the proceedings but not to pass the final order with regard to fixation of

tariff, in the light of the Full Bench judgment dated 02.12.2013 of this Appellate Tribunal by which the said Appeals being Nos. 132 of 2012 and 133 of 2012 had been allowed and the matter remanded to State Commission for re-consideration of the biomass fuel price and consequently re-fixing of tariff of biomass based power projects. The three members of the Appellant Association have filed the instant appeal before this Tribunal as provided under Section 111 of the Electricity Act 2003, which is a statutory appeal that can be filed on facts as well as on law before this Tribunal. The Appellant Association, by way of filing the instant appeal simply wants that the tariff fixed by the impugned tariff order dated 8.8.2013 should be made applicable to their previously existing Biomass based Power Projects, though they have already established their Biomass based Power Projects in the previous tariff period and are not being set up in the current tariff period, namely, 01.08.2013 to 31.03.2014 just on the ground that because of increase in fuel prices of Biomass, the said Biomass based generating units are on the verge of closure due to financial constraints and availability of biomass fuel at higher rate than fixed by the State Commission in the relevant tariff period in which they were brought into existence or set up. The Appellant Association has statutory right to challenge the impugned tariff order on the aforesaid grounds which appellant has exercised. This is a different thing whether this Appellate Tribunal accepts the submissions of the appellant or not but the statutory right of the appellant to file appeal under Section 111 of the Electricity Act, 2003 cannot be whittled down or curtailed. Thus, we hold that the present appeal is legally maintainable against the impugned order before this Appellate Tribunal.

**ISSUES NOS. (i) & (ii)**

13. Since both these issues are inter-related, they are taken up together for disposal. The following submissions have been made on behalf of the appellant on these issues.

(i) that the State Commission while passing the impugned order has failed to consider the ground realities and further failed to follow the norms laid down by the CERC in fixation of tariff and proceeded to confirm the recommendations made in the Discussion Paper circulated by the State Commission, prior to passing of the impugned order.

(ii) that the appellant association has placed on record all the relevant informations alongwith objections to the Discussion Paper which have not been considered by the State Commission while passing the impugned order. Without considering the objections of the appellant, the State Commission, in the impugned order, has held as under:-

“As regards the suggestion to extend the tariff determined by the present order to the existing projects, the matter can be dealt with separately and not as a part of this order.”

(iii) that the impugned tariff order fixing the tariff for the Biomass Projects in respect of six components viz Station Heat Rate (SHR), Gross Calorific Value (GCV), O & M Expenses, Auxiliary consumption, Biomass Fuel Cost and PLF is not at all tenable.

(iv) that the non-implementation of the revised tariff determined by the impugned tariff order with regard to the existing PPAs in respect of the members of the Appellant Association is not at all tenable.

(v) that the State Commission has failed to consider the contention of the appellant that the three Biomass Projects of the members of the Appellant Association, which are not operating due to higher variable costs should be covered under the new impugned tariff order dated 8.8.2013 and the GEDA, which is a State nodal agency, also supported the said stand of the appellant but nodal agency's support has not been considered.

(vi) that the State Commission has not fully addressed the concerns of the Biomass Projects while fixing the tariff under the impugned order so that the generators would be able to recover the cost of electricity in a reasonable manner as contained in Section 61 of the Electricity Act, 2003.

(vii) that the three members of the Appellant Association who have existing PPAs and are almost on the verge of closing down their units since they are not able to sustain the cost, beside erosion of capital, the revised tariff determined by the impugned order is until and unless extended to the existing PPAs, the said industry would not be able to sustain the generation of electricity.

(viii) that the State Commission, in its previous order no. 5 of 2010, had considered fuel price based on GEDA recommendations and now the State Commission, though recommendation of GEDA is available on fuel price has ignored the same and fixed the biomass price based on equivalent heat value of coal on the ground that there is no authentic data and reliable study on biomass.

(ix) that the State Commission has considered SHR of 3800 and 3950 kCal per KW for water cooled condenser and air cooled condenser respectively, which is low, compared to the practical situation, considering the wastage, loss due to degradation and handling losses. CERC Committee has recommended

considering various facts, a SHR of 4200 kCal per KW hour for traveling grate boiler but the same has not been considered by the State Commission.

(x) that the PLF considered by the State Commission as 70% for first year and 80% from second year is not practical in the light of the fact that no biomass plants achieve the PLF of 80% continuously because of frequent breakdown of equipment due to nature of fuels and insufficient fuel arrivals during monsoon periods. Hence, the State Commission ought to have considered 60% in first year and 70% from second year onwards as practically possible PLF.

(ix) that the State Commission has considered only 10% of gross generation towards auxiliary consumption in respect of both water cooled and air cooled condenser based power plants. The State Commission has not considered the Biomass Association's request to the effect that 10% is low for various reasons and 12% towards auxiliary consumption should be considered.

(x) that the State Commission has wrongly fixed the O & M expenses at 4% of the capital cost and this provision is too small based on the data from various power plants in operation.

(xi) Lastly, that the CERC has passed a tariff order dated 15.05.2014 in Petition No. SM/354/2013 in respect of Biomass Project fixing the levelised and variable costs for the project set up in the various States. The applicable tariff rate for 2014-15 ranges from Rs. 7.02 p to Rs. 7.97p.

14. **Per contra**, the following submissions have been made by Shri Anand K. Ganesan, learned counsel appearing on behalf of the respondent no.2:

(i) that the appellant's contention that the new tariff order (impugned tariff order) should apply to Biomass Plants already set up is mis-conceived and liable to be rejected.

(ii) that the State Commission had earlier passed a tariff order dated 17.05.2010 fixing the tariff for biomass generating stations being set up between 2010-13 during which period the three members of the Appellant Association had set up their biomass generating stations and at the time of the impugned tariff order the PPAs with regard to the three members of the Appellant Association were already existing and the existing PPAs cannot be ordered to be modified or revised by the impugned tariff order because the impugned tariff order is applicable for the control period from 01.08.2013 to 31.03.2016.

(iii) that the present proceedings before the State Commission were initiated only for the purpose of fixing the tariff for generating stations being set up from 1.08.2013 onwards.

(iv) that the proceedings before the State Commission was only to fix the tariff for the period from 1.8.2013 and the same cannot be applied retrospectively, as sought by the Appellant Association. Merely because the State Nodal Agency- Gujarat Energy Development Agency (GEDA) had accepted this proposition, it does not mean that the tariff order passed by the State Commission could be applied retrospectively.

(v) that the biomass price decided by the State Commission is one of the highest in the country and has been done by linking it with the fluctuations in the price of conventional fuel. Merely because in the earlier order, the State Commission had followed the recommendations of GEDA to fix the price would not mean that the same needs to be adopted in the impugned order. The process of regulation is an evolving one and the State Commission can adopt such approach as it considers appropriate and which has some logic.

(vi) that there is no merit in the appellant's contention that the State Commission ought to have adopted the tariff determined by the Central Commission for FY 2013-14 onwards and application of the parameters recommended by the Committee constituted by the Central Commission.

(vii) that it is not the case of the appellant that the State Commission has not conducted any study to arrive at the tariff. The appellant is only asking for Central Commission's tariff to be adopted.

(viii) that the parameters fixed in the impugned order have to be tested in the background that the State Commission floated a detailed Discussion paper which noted the tariffs prevailing in the other States, the technologies available, the nature and quantum of biomass available in Gujarat, the principles of tariff determination, other commercial issues etc. It is clear from the perusal of the Discussion Paper that the State Commission carried out a detailed exercise and called for comments based on the same.

15. Component-wise following contentions have been made on behalf of the respondents:-

**A. STATION HEAT RATE**

(i) that the appellant is seeking Station Heat Rate of 4300 Kcal/kwh as against 3800 Kcal/Kwh fixed by the State Commission. The details were given by the State Commission in the Discussion Paper. After considering the comments of all these parties, the State Commission, in the impugned order, has held as under:-

“.....**Commission's Decision:-**

The Commission has noticed that biomass developers have predominantly used travelling grate type boilers for rankine cycle based biomass based power projects. The SHR of such projects varies in the range of 3400-3900 kCal/kWh. Most of the SERCs have also specified the SHR as 3800 kCa/kWh. RERC has specified a higher

SHR for biomass projects. The Commission in the tariff order dated 07 February, 2011 for biomass based power projects with air-cooled condenser had considered the SHR of 3950 kCal/kWh by recognizing the fact that the condenser pressure in such projects required to be kept at high level which resulted in higher SHR than the water-cooled condenser. While determining the SHR, it is essential to keep in mind that the plant operates efficiently and at the same time the consumers are not burdened with inefficient operation of plant. Considering the above facts, the Commission decides to retain the SHR as 3800 kCal/kWh and 3950 kCal/kWh for water-cooled condenser and air-cooled condenser based biomass projects respectively for tariff determination purpose.

- (ii) that there is no basis in the appellant's seeking a Station Heat Rate of 4300 kCal/kWh. The appellant's plants have to operate efficiently and cannot simply ask for an out of the hat figure to be fixed as the Station Heat Rate.
- (iii) that the Station Heat Rate fixed by the State Commission is also in consonance with the rates adopted by the other Regulatory Commissions.

## **B. GROSS CALORIFIC VALUE (GCV) OF FUEL**

- (i) that the appellant is seeking GCV of 3100 kCal/kg as against 3400 kCal/kg fixed by the State Commission on the ground that the figure of 3100 kCal/kg figures in the Report of the Committee constituted by the Central Commission.
- (ii) that the State Commission after obtaining data on the ground arrived at the Gross Calorific Value with the following findings in the impugned order which is as under:-

### **.....Gross Calorific Value (GCV) OF FUEL**

The Commission in its discussion paper had considered the weighted average GCV of representative surplus agro residues available in Gujarat for power generation. In order to examine the availability of

forest/waste land biomass, the Commission once again looked into the matter and noted that the availability of forest/waste land biomass in the state is considerable and Prosopis Juliflora is one of the major forest biomass available in the State and it can be used as fuel in biomass based power projects. Therefore, the Commission decides to consider the representative biomass consisting of equal proportion of surplus agro residue and Prosopis Juliflora available in the State.

Hence, the Commission decides to consider a normative GCV of representative biomass as 3400 kCal/kg for tariff determination purpose for the new control period. The normative GCV of 3400 kCal/kg as given above is arrived on the basis of GCV of representative surplus agro residue and that of Prosopis Juliflora after allowing appropriate reduction in GCV due to decay of biomass because of its storage, moisture contents etc.

### **C. OPERATION & MAINTENANCE EXPENSES (O & M EXPENSES)**

The only contention of the appellant on this issue is that the O & M Expenses should not be 4% of the capital cost but be provided at Rs. 40 lacs per MW. The appellant has not produced any material to justify its claim.

(i) that the State Commission after going through the approach followed by the CERC and other SERCs while fixing the O & M cost for the purpose of Biomass based Power Projects and Bagasse based Co-generation Projects has fixed the O & M cost of 5% of the capital cost of Biomass based Power Project. The O & M costs proposed in the Discussion Paper are reasonable and the Commission has rightly decided to retain the same for the next control period. Also, the Commission has decided to allow an annual escalation at 5.72% per annum over the tariff period as per the provisions of MYT Regulations, 2011.

(ii) that the appellant has not shown any ground as to why the O & M expenses fixed are not sufficient.

### **D. AUXILIARY CONSUMPTION**

(i) that the appellant contends that auxiliary consumption should be 12% instead of 10% without giving any reasons except relying on the Committee Report.

(ii) that the State Commission, after considering the tariff order issued by the CERC/SERCs, has found that most of the SERCs have specified 10% auxiliary consumption for biomass based power projects.

(iii) that the Report of the Committee, which has given a general recommendation, cannot be a reason to fault with the findings of the State Commission in the impugned order.

#### **E. BIO MASS FUEL PRICE**

(i) that the appellant's contentions on this issue are as under:-

- (a) The biomass price should be determined on an annual basis;
- (b) The methodology followed by the State Commission is not based on any evidence;
- (c) Heat value approach and landed cost of coal approach is inappropriate;
- (d) The fuel price should have been fixed as per the recommendations of GEDA.

(ii) that the State Commission while deciding the biomass fuel price analysed the biomass cost data submitted by the projects already commissioned. The price of biomass procured by the biomass based power projects is through an unorganized market and there is lack of availability of authentic data. The GCV of biomass is affected by the moisture content, malpractices in procurement, leakages in transportation, inclusion of debris etc. and it is the responsibility of the developer to procure the biomass of desired quality at appropriate price and quantity received at its doorstep. Though the transportation cost of biomass as compared to the coal transportation is less but the State Commission considered the cost of coal procured through the long term contracts by the State utility. The State Commission has determined the price of biomass as per equivalent heat value method. Accordingly, the State Commission has decided the normative cost of coal and biomass as Rs. 2912 per MT and Rs. 2726 per MT respectively for tariff

determination purpose during the control period starting from 15th August, 2013.

### **F. PLANT LOAD FACTOR (PLF)**

The appellant's contention that it is not possible for the biomass based power generation projects to achieve the PLF as fixed by the State Commission is not acceptable because the impugned order is based on the report of Central Electricity Authority and the approach followed by the Central Commission. It is strange that the appellant does not want to follow the approach of the Central Commission on this issue. Thus, the appellant is taking a selective approach and picking and choosing the norms of the Central Commission, wherever it is beneficial to the appellant.

16. We have heard Mr. G. Umapathy, learned counsel for the appellant, Ms. Suparna Srivastava, learned counsel for the respondent no.1, Mr. M.G. Ramachandran & Mr. Anand K. Ganesan, learned counsel for the respondent no.2. We have carefully gone through the written submissions filed by the rival parties and gone through the material on record including the impugned order.

17. It is to be seen whether the impugned tariff order dated 08.08.2013 (new tariff order) for the control period 01.08.2013-31.03.2016 is applicable to the three existing biomass generating stations of the three members of the Appellant Association which had been set up in the previous control period for which the tariff order for that control period was passed. It is not in dispute that the three existing biomass generating stations of the three members of the Appellant Association were in existence with the then existing Power Purchase Agreements when the impugned tariff order dated 08.08.2013 was passed by the State Commission.

18. It is also not in dispute that the impugned tariff order dated 08.08.2013 of the State Commission is applicable to the projects being set up in the State of Gujarat for the control period 01.08.2013-31.03.2016 and the eligibility criteria, as per the impugned tariff order, are that the project should be commenced on or after 01.08.2013 and the sale of power should be during the control period of the impugned tariff order, namely, 01.08.2013 to 31.03.2016. By the impugned order, the State Commission has determined the tariff applicable to the biomass based power projects and bagasse based co-generation power projects being set up during the control period from 01.08.2013 to 31.03.2013 in the State of Gujarat. Seeking applicability of the impugned order to the already existing biomass based generating stations of the three members of the Appellant Association, the contention of the Appellant Association is that their tariff is unviable.

19. The other contention of the Appellant Association is that these three biomass projects are not operating due to higher variable cost and they are almost on the verge of closing down since they are not able to sustain the cost of fuel, beside erosion of capital and until the revised tariff determined by the impugned tariff order is extended to the existing Power Purchase Agreements in regard to these three previously existing biomass projects, they would not be able to sustain the generation of electricity.

20. On considering the rival contentions of the parties, we find no force in any of the submissions or contentions made on behalf of the Appellant Association. The learned State Commission, in the impugned order, has considered all the datas available and only thereafter passed the impugned order citing sufficient grounds and cogent reasons. The impugned order contains complete analysis and discussions while fixing the various

components like SHR, GCV, O & M Expenses, Auxiliary Consumption, Biomass Fuel Cost and PLF and only after due consideration of these components, the tariff has been determined by the impugned order for the aforesaid control period. We find no infirmity or perversity in any of the findings recorded by the State Commission in the impugned order while considering the components and determining the tariff applicable to the biomass based power projects being set up during the control period from 01.08.2013 to 31.03.2016.

21. We observe that the State Commission had earlier passed a tariff order dated 17.05.2010, fixing the tariff for biomass generating stations being set up during 2010-13, during which period the three members of the Appellant Association had set up their biomass generating stations and at the time of the impugned tariff order dated 08.08.2013, the Power Purchase Agreements with regard to these three biomass power projects were already existing and the existing Power Purchase Agreements cannot be ordered to be modified or revised by the impugned tariff order because the impugned tariff order is applicable for the control period from 01.08.2013 to 31.03.2016.

22. We may further note that the instant proceedings before the State Commission were initiated only for the purpose of fixing the tariff for biomass based power projects and bagasse based co-generation projects being set up from 01.08.2013 onwards and the same cannot be applied retrospectively, as sought by the Appellant Association. Merely because, the State Nodal Agency, namely, GEDA had accepted the proposition of the Appellant Association, it would not mean that the impugned tariff order passed by the State Commission should be applied retrospectively. If earlier the State Commission had accepted the recommendations of GEDA to fix

the price that would not mean that the same be adopted in the impugned order because the process of regulation is an evolving one and the State Commission is free to adopt such approach which it considers appropriate and logical.

23. The Appellant Association has not contended that the State Commission has not conducted any study to arrive at the tariff but it is only seeking the Central Commission's tariff to be adopted and that too partially. The contentions of the appellant itself make it clear that the Appellant Association is ready to adopt only a part of the Central Commission's tariff which it thinks beneficial to it and not to adopt the part which is prejudicial to it and such kind of pick and choose in any order or judgment cannot be allowed. The State Commission is also not mandated to follow the report of the Committee constituted by the Central Electricity Regulatory Commission dated August, 2013 which has recommended certain norms for biomass projects.

24. The learned State Commission, in the impugned order, itself has observed that as regards the suggestion of the Appellant Association to extend tariff determined by the present order to the existing projects, the matter can be dealt with separately and not as a part of the impugned order. Thus, the State Commission has given liberty to the Appellant Association to raise the suggestions and then the matter can be dealt with separately. The current position, as emerges from the aforesaid discussion, is that the Full Bench judgment dated 02.12.2013 of this Tribunal in Appeal Nos. 132 and 133 of 2012 is under challenge before the Hon'ble Supreme Court through Civil Appeal Nos. 1973-1974 of 2014 and the Hon'ble Supreme Court vide interim order dated 28.02.2014, while admitting the Civil

Appeals and issuing notice on the stay applications has directed that in the meanwhile the proceedings may continue before the State Commission but the State Commission will not pass any final order with regard to fixation of tariff. All the three members of the Appellant Association have already filed petitions for re-determination of tariff, in compliance of the judgment dated 02.12.2013 of this Appellate Tribunal in Appeal Nos. 132 & 133 of 2012 for reconsideration of biomass fuel price and re-fixing of tariff of biomass based power projects, the fate of the petitions shall depend upon the outcome and result of the Civil Appeals pending before the Hon'ble Supreme Court.

25. In view of the above discussions, both the aforesaid issues are decided against the Appellant Association as the contentions of the Appellant Association have no merit. We approve to all the findings recorded in the impugned order of the State Commission.

### **SUMMARY OF FINDINGS**

26. The new tariff determined by order dated 08.08.2013, for the control period from 01.08.2013 to 31.03.2016, passed by the State Commission is not applicable to the three existing biomass generating stations of the three members of the Appellant Association because the three existing biomass generating stations were already in existence with the then existing Power Purchase Agreements at the time of passing of the impugned order. These three existing biomass generating stations were set up in the previous tariff period for which previous tariff order dated 17.05.2010, was passed by the State Commission.

27. The learned State Commission is not mandated to follow the Report of the Committee constituted by the Central Electricity Regulatory Commission, dated August, 2013, which has recommended certain norms for biomass projects.

28. In view of the above discussions, we do not find any merit in the appeal. Consequently, the instant appeal is dismissed and the impugned order dated 08.08.2013 is hereby affirmed. The parties are left to bear their own costs.

**Pronounced in open Court on this 12<sup>th</sup> day of August, 2014.**

**(Justice Surendra Kumar)  
Judicial Member**

**(Rakesh Nath)  
Technical Member**

**rkt**