

**Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**R.P. No. 13 of 2013 in**  
**Appeal no. 199 of 2012**

**Dated : 30<sup>th</sup> June, 2014**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of**

- |  |  |
|--|--|
| <b>1. The South Indian Sugar Mills Association<br/>"Karumuthu Centre"<br/>No.634, Anna Salai,<br/>Nandanam,<br/>Chennai-600 035</b>                | <b>...Review Petitioners/<br/>Appellants</b> |
| <b>2. Ponni Sugars (Erode) Limited,<br/>ESVIN House,<br/>No.13, Rajiv Gandhi Sala<br/>(Old Mahabalipuram Road),<br/>Perungudi, Chennai-600 096</b> |  |
| <b>3. EID Parry (India) Limited.,<br/>"Sugar Division",<br/>Dare House, No.234, NSC Bose Road,<br/>Parry's Corner, Chennai-600 001</b>             |  |
| <b>4. Rajshree Sugars and Chemicals Limited,<br/>No.7, 3<sup>rd</sup> Street, Ganapathy Colony,<br/>Teynampet, Chennai-600 018</b>                 |  |

5. **Kothari Sugars & Chemicals Limited,  
Kothari Buildings,  
No.115, Utthamar Gandhi Salai,  
Nungambakkam,  
Chennai-600 034**
6. **Sakthi Sugars Limited,  
180, Race Course Road,  
PB No.3775,  
Coimbatore-641 018**
7. **Dharani Sugars & Chemicals Limited,  
PGP House, 57 Sterling Road,  
Nungambakkam,  
Chennai-600 034**
8. **Bannari Amman Sugars Limited,  
No.1212, Trichy Road,  
Coimbatore-641 018**
9. **Dhanalakshmi Srinivasan Sugars Pvt Ltd,  
274-C, Thuraiyur Road,  
Perambalur-621 212  
Tamil Nadu**
10. **Madras Sugars Limited,  
No.1212, Trichy Road,  
Coimbatore-641 018**

**Versus**

1. **Tamil Nadu Electricity Regulatory Commission  
TIDCO Office Building,  
No.19A, Rukmini Lakshmi pathy Road**      **...Respondents**

**(Marshalls Road)  
Egmore, Chennai-600 008  
Tamil Nadu**

- 2. Tamil Nadu Generation & Distribution Corporation Ltd,  
NPKRR Maaligai  
No.144, Anna Salai,  
Chennai-600 002**

**Counsel for the Appellant(s) : Mr. K Gopal Chaudhary  
Mr. T Srinivasa Murthy  
Mr. Rahul Balaji,  
Ms. Shruti Iyer**

**Counsel for the Respondent(s): Mr. S Vallinayagam**

### **ORDER**

This is the Review Petition filed by the Review Petitioners seeking Review of the judgment of this Tribunal dated 04.09.2013.

2. The Review Petitioners are the Appellants in Appeal no. 199 of 2012. The Review Petitioners are all sugar

- mills who have set up bagasse based co-generation power projects in Tamil Nadu. They are the captive consumers of the electricity generated from their respective bagasse based co-generation plants.
3. They entered into Power Purchase Agreements with the Tamil Nadu Electricity Board, the predecessor of the 2<sup>nd</sup> Respondent for the sale of the surplus energy generated by them from the said co-generation plants.
  4. Originally, the State Commission issued tariff order for the bagasse based co-generation plants on 6.5.2009. For revising the said Tariff order dated 6.5.2009, the State Commission issued public notice on 3.5.2011 inviting suggestions and views from the public. The Appellants as well as other public presented their views before the State Commission.

5. Ultimately the State Commission issued the tariff order for bagasse based co-generation plants on 31.7.2012. Aggrieved by the said order, the Review Petitioners filed the Appeal in Appeal no. 199 of 2012.
  
6. After hearing the parties, this Tribunal rendered judgment in the said Appeal on 4.9.2013 remanding the matter to the State Commission for fresh consideration in respect of the some of the issues.
  
7. Though they are not aggrieved over the remand order in the judgment allowing the Appeal, the Appellants/Review Petitioners being aggrieved over the nature of some of the directions have filed this Review Petition. They raised the following issues while seeking for Review:
  - i) Capital Cost

- ii) Working Capital
  - iii) Application of matters in para 8.2 of the impugned order to plants set up before the impugned order.
  - iv) Interim Tariff, adjustment after final determination on remand and allowing of interest on arrears as carrying cost.
8. On these issues, we have heard both the parties.
9. With regard to the first issue relating to Capital Cost the Review Petitioners submitted that they have no grievance over the order of this Tribunal setting aside the finding of the State Commission with regard to the capital cost by holding that the determination of the capital cost by the State Commission was not correct and consequently directing the State Commission to redetermine the capital costs on the basis of the statement of reasons of the Central Commission which

would form part of the guiding principles being considered in the context of local circumstances. But they feel aggrieved over the nature of directions issued by Tribunal to the Appellants directing them to furnish information regarding the steam used in power generation and the sugar production for deciding the apportionment of the cost between the power generation and sugar plant and this aspect of the directions is called for Review as there is an error apparent on the face of record.

10. While elaborating this point, it is contended by the Learned Counsel for the Review Petitioners that, the methodology adopted by the Central Commission has to be followed while determining the capital cost for producing steam for the sugar plants and if the capital cost for producing steam for sugar plant is considered on a proper appreciation and if the costs of the power

generation equipment is excluded, it would be seen that the cost allocable to the production to low pressure steam for the sugar plant would be so small and therefore the Petitioner shall be directed to submit the information regarding the steam used for power generation and sugar production with a liberty to furnish any other data and to make submissions on the issue of the apportionment of the cost by the sugar plant and power generation and on that basis the State Commission be directed to consider and decide on all such submissions made by the parties according to the law.

11. We have already considered these submissions with regard to this issue and have rendered our findings in the impugned judgment which are as follows:-

*“38. The State Commission in the impugned order has noted that it had sought clarification from the Appellants regarding cost allocation for power generation and*

*other uses as steam is used both for power generation and sugar production. However, the Appellants only made generalised statements regarding use of steam in sugar production and power generation. In the absence of the details, the State commission decided to deduct 10% of capacity charges towards steam extracted and used in sugar manufacture. We feel that the Appellants should furnish the requisite data regarding usage of steam in the sugar production to the State Commission to enable the State Commission to decide appropriate allocation of cost to power generation and sugar plant.*

*39. In view of the discussions made above, the rate of capital cost fixed by the State Commission is not correct. The State Commission has to consider the materials furnished by the Appellants as well as the suggestions made by IREDA, and the explanation given by the Central Commission in the statement of objects and reasons of the 2012 Regulations and fix the rate of capital cost on taking into consideration the local/State circumstances. The Appellants are also directed to furnish the information sought by the State Commission regarding steam used in the power generation and sugar production for deciding apportionment of cost between sugar plant and power generation.*

*40. Accordingly, this finding is set aside and the matter is remanded to the State Commission for fresh consideration on this issue.”*

12. We have reiterated the findings in our summary of findings also which are as follows:-

*“Capital cost: The finding of the State Commission on this issue is set aside and the matter is remanded to the State Commission for fresh consideration. The Appellants are also directed to furnish the data sought by the State Commission regarding usage of steam in sugar production and power generation to enable the State Commission to decide appropriate apportionment of the Capital cost.”*

13. In view of the above discussions of the finding, we shall see whether Review is called for on this issue.
  
14. The co-generation is a process which simultaneously produces two or more forms of energy including electricity. In sugar mill co-generation plants, electricity is produced in addition to process steam which in turn is used in the process of producing sugar. The steam generator and some equipments in the co-generation plant are in common use for producing both steam used for production of sugar and steam used for production of electricity. The capital cost incurred on the

- equipments for the purpose of process steam is to be deducted from the total capital cost for generation for determining the fixed cost component of the tariff for co-generation as the fixed cost component should reflect the fixed cost of power generation alone and not production of sugar.
15. Therefore, this Tribunal by the impugned judgment dated 4.9.2013 directed the Review Petitioners/Appellants to furnish information regarding usage of steam in the power generation and sugar production for deciding apportioning of cost between sugar plant and power plant.
16. On that ground, the matter was remanded to the State Commission to enable the parties to furnish additional information to decide the issue in question. It is open to the parties to make all submissions with regard to

issue. In light of the reasons given in the impugned judgment for the remand, the State Commission will consider all such submissions and decide the matter according to law. Therefore, we do not find any error apparent on the face of the record in giving such directions on this issue. Accordingly, this issue is decided.

17. The second issue relates to the working capital.
18. On this issue this Tribunal held that the findings of the State Commission need not be interfered with since the said findings was on the basis of the State Commission Regulations.
19. According to the Review Petitioners, this decision of the Tribunal was based upon the erroneous impression that the State Commission Regulations provides for working

- capital and rebate, but the State Commission Regulations do not deal with the computation of the working capital in such a manner or any other manner and as such this was an error.
20. On the above ground, it is prayed by the Review Petitioners that this Tribunal may direct the State Commission to follow the Central Commission Regulations for determining the working capital in the absence of the specific Regulations of the State Commission. We have heard the Learned Counsel for the Respondent, on this issue.
21. We have carefully considered the submissions of both parties and have gone through our judgment.
22. As pointed out by the Review Petitioners that the Clause 4 of the State Commission's Regulations of the

- 2008 states that the State Commission shall be guided by the principles and methodologies specified by the Central Commission and the State Commission shall adopt appropriate financial and operational parameters while determining the tariff and that it may adopt appropriate methodology.
23. This Tribunal quoted in the judgment the manner of computation of working capital. As a matter of fact the provisions extracted in para 100 of the judgment of the Tribunal have been taken from the written submissions filed by the State Commission.
24. This Tribunal while deciding the issue considered those references in the written submissions as if they are the clauses of the State Commission's Regulations. This is purely error apparent as pointed out by the Review Petitioners.

25. Therefore, the State Commission is directed to compute by considering receivables by 2 months as per the Central Commission Regulations and the rebate to be allowed for payment within one month of the presentation of the bills as per the Central Commission's Regulations. Accordingly, the finding rendered on this issue is modified to the above fact. This issue is decided accordingly.

26. The next issue is relating to the Application of the matters in para 8.2 of the impugned order has been set up before the impugned order.

27. On this issue this Tribunal has observed that a matter of applicability of the order related to issues to the plants set up before the impugned order is decided in terms of the findings rendered by this Tribunal in the

- judgment in Appeal no. 197 of 2012 rendered on 24.5.2013.
28. It is pointed out by the Review Petitioner that the issue raised in the said Appeal no. 197 of 2012 was based upon the contentions that the impugned tariff order cannot be made applicable to the wind energy developers, which are having existing wheeling agreements with the distribution licensees.
29. In the summary of the findings in the judgment this Tribunal has held that the Transmission and wheeling charges for the wind energy wheeled would be as per the impugned order and that the then prevailing tariff for wind energy generators who have entered PPAs with the distribution licensees would be applicable.
31. In the said judgment in Appeal no. 197 of 2012 this Tribunal considered Regulations 1, 6, and 8 and

- eventually held that Clause 8 applies only to those cases where energy is applied under open access would also avail banking facility.
32. As pointed out by the Review Petitioners in respect of the Appellants sugar mills selling their energy to the distribution licensee in the impugned tariff order in respect of matters enumerated in para 8.2 would not be applicable.
33. In view of the above, it would be appropriate to hold that the provisions of the impugned tariff order enumerated in para 8.2 being matters enumerated in the Regulation 8 should not be made applicable to the sugar mills who sell their energy to the distribution licensees. Thus, the finding given in respect of this issue is modified to the said effect. Accordingly ordered.

34. The next issue with reference to interim tariff adjustment after final determination of demands and allowing of interest and arrears of carrying cost.
  
35. We have heard the Learned Counsel for the parties on this issue. As correctly pointed out by the Learned Counsel for the Respondent this issue has been raised on the basis of the new plea made now seeking for a new prayer for the first time in this Review Petition.
  
36. These are of the matters which are to be considered only by the State Commission after finalization of all the other issues. These issues cannot be decided by this Tribunal in this Review petition. Therefore, we reject the contention of the Review Petitioner on this issue.

37. In view of the forgoing conclusions, this Review Petition is partly allowed only in respect of some aspects to the extent indicated above.
38. State Commission is directed to consider the same and pass orders according to law after hearing the parties.
39. Pronounced in the open court on this **30<sup>th</sup> day of June, 2014.**

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

Dated:30<sup>th</sup> June,2014.

√

**REPORTABLE/NON-REPORTABLE**

mk