

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO.16 OF 2015

Dated: 28th April, 2016.

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:-

GREEN ENERGY ASSOCIATION,)
Registered Office address Sargam,143,)
Taqdir Terrace, Near Shirodkar High)
School Dr.E.Borjes Road, Parel(E),)
Mumbai-400 012.) **... Appellant**

AND

1. **MADHYA PRADESH ELECTRICITY)**
REGULATORY COMMISSION,)
5th Floor, Metro Plaza, Arera Colony,)
Bittan Market, Bhopal 462 016.)

2. **M.P. POWER MANAGEMENT)**
COMPANY LIMITED,)
Shakti Bhawan, Vidyut Nagar,)
Rampur Jabalpur (M.P).) **... Respondents**

Counsel for the Appellant(s)

Mr. Sanjay Sen, Sr.Adv.
Mr.Hemant Singh
Mr. Tabrez Malawat
Mr. Matrugupta Mishra
Mr. Tushar Nagar
Ms. Meghana Aggarwal
Ms. Shikha Ohri

3. The Appellant filed Petition No.14 of 2014 in the State Commission. The gist of Appellant's case has been reproduced in the impugned order, which we may quote here for convenience:

“M/s Green Energy Association is an association of companies engaged in the business of Renewable Energy (RE) generation. The petitioner represents the majority of the members who represent about 90% of the investors in the solar REC mechanism.

The Commission notified the MPERC(Cogeneration and generation of electricity from renewable sources of energy)(Revision-I) Regulations, 2010 as amended from time to time. Regulation 4 of the aforesaid Regulations specifies the quantum of Renewable Purchase Obligations (RPO) for the period from FY 2010-11 to FY 2014-25 for solar and non-solar, for the obligated entities including the distribution licensees.

Regulation 4.3 of the aforesaid Regulations states that:

“4.3 If an Obligated Entity is not able to fulfill the minimum purchase requirements as per Regulation 4.1 above, such Obligated Entity shall be required to purchase Energy Certificates issued by the Central Agency as specified in PART-B of these Regulations.”

Regulations 15.1 and 15.3 of the aforesaid Regulations state as under:-

“15.1 In the event of Obligated Entities do not fulfill the mandate of the obligations to purchase energy from Renewable Energy Sources as provided in these Regulations during any financial year and also do not purchase the certificates from the Power Exchange, the Commission may:

- (i) direct the Obligated Entity to deposit into a separate Fund.....for purchase of Certificates.....on the basis of the shortfall in units of RPO and the Forbearance Price of the Certificates.....Renewable Energy Sources:...*

- (ii) to thein the Fund.*

15.3 Further, where any person.....fails to purchase the required percentage of power from Renewable Energy Sources or the Renewable Energy Certificates, he shall also be liable for penalty as may be decided by the Commission under Section 142 of the Act.”

The Commission passed an order dated 10.9.2013 in Petition No.38/2013 and directed the SEZ to ensure RPO compliance. By the order dated 20.11.2013 in Petition No.35 of 2013, the Commission directed the utilities that continuous failure on their part to fulfill the RPO cannot be allowed to go unpunished. In the order dated 22.08.2012 in Petition No.26/2012 the Commission disposed of the same holding that the

petitioner (M.P. Power Management Co. Ltd.) had not made any effort to procure solar power.

In the judgment dated 25.4.2013 in Appeal No.24 of 2013, Hon'ble APTEL has clearly placed the purchase of renewable energy through PPA and through REC at par. The judgments passed by Hon'ble APTEL on the aforesaid issues in cases of other states are relevant in this regard.

The solar RECs have been available in the market since May 2012. The respondents have not made any attempt for the procurement of the solar RECs for the compliance of deficit solar RPO.”

4. Thus, in short, it is the Appellant's case that Respondent No.2 has failed to fulfill Solar RPO for FY 2010-2011 to FY 2013-14 and despite the availability of Solar RECs, it has not made any attempt to procure them for compliance of deficit Solar RPO. Respondent No.2 could not successfully meet the Appellant's case of non-compliance of Solar RPO norms for FY 2011-12 to FY 2013-14. Respondent No.2 submitted that saddling loss making Respondent No.2 with further burden of purchasing power at average power purchase cost rates and purchasing RECs for the same power which is far above the

bidding rates would sink Respondent No.2 further in the red. It was further submitted that Respondent No.2 is making all diligent efforts for procurement of solar power for fulfillment of RPO through various schemes and competitive bidding process, etc. Therefore, the petition be dismissed.

5. The State Commission reached a conclusion that Respondent No.2 had in fact defaulted in fulfilling statutory renewable purchase obligation. The State Commission imposed a token penalty of Rs.25,000/- (Rupees twenty five thousand only) on Respondent No.2 towards non compliance of the solar RPO target. The relevant observations of the State Commission could be quoted:

“The Commission has heard both parties and carefully considered the submissions made. The Commission has noted that the present petition for non-compliance of solar RPO by obligated entities in past years was made only on 03.7.2014. The Commission is unable to fathom the reasons for the inability of the petitioner to approach the Commission earlier for the same purpose. Had the Commission been approached at the relevant time and the issues now raised been agitated then, suitable action in the relevant financial year would have been logical and

easier. What the petitioner now seeks is the purchase of RECs to make up for the shortfall of three different financial years at the current prices for RECs. Apart from financial stress which shall be caused to the respondent, it does not appear to be logical at this stage.

The aforesaid does not, in any manner, mitigate the serious default on the part of respondent in fulfilling statutory renewable purchase obligations. It is clear that the respondent has been thoroughly remiss in this regard. This default cannot go unpunished. The Commissions, therefore, imposes a token penalty of Rs.25,000.00 on the respondent towards non-compliance of the solar RPO target as per the provisions of MPERC(Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010, which is to be deposited with the Commission within 30 days of the issue of this order. It may be emphasized that the penalty is a token and does not redeem the failure of the respondent in the matter. The Commission would like to warn the respondent that future non-compliance in this regard would be dealt with severely.”

6. Learned counsel for the Appellant drew our attention to Regulation 15 of the MPERC (Cogeneration and generation of electricity from renewable sources of energy) (Revision-I) Regulations, 2010 (**“the said Regulations”**). Counsel submitted that the penalty of Rs.25,000/- is not in accordance with Regulation 15 thereof. It is too meager and makes a

mockery of the idea behind RPO obligation and REC mechanism. Respondent No.2 has not appealed against the impugned order. Thus, it has accepted that penalty needs to be imposed on Respondent No.2 for its default. Respondent No.2 also cannot argue on the quantum of penalty. The penalty is too inadequate and contrary to Regulation 15 of the said Regulations. Counsel submitted that therefore no interference is called for with the same. Counsel submitted that the impugned order overlooks the intent of Section 86(1)(e) of the Electricity Act ("**the said Act**") and judgments of this Tribunal which emphasize the importance of fulfillment of RPO norms. Counsel submitted that Respondent No.2 has admitted in its submissions that during FYs 2011-12 and 2013-14, no financial provisions were made in retail supply tariff orders for purchase of renewable energy to fulfill RPO. Respondent No.2 has post the impugned order, again failed to fulfill RPO norms. Respondent No.2 does not therefore deserve any sympathy. The impugned order may, therefore, be set aside and appropriate penalty may be imposed on Respondent No.2.

7. Mr. Rai, learned counsel for the State Commission submitted that in order to secure compliance of Solar RPO for FY 2014-15 and 2015-16, the State Commission has registered Suo Motu Petition No.43 of 2015 and is pursuing the matter with Respondent No.2. Thus, the State Commission is making all efforts to ensure that Respondent No.2 fulfills RPO obligation for FYs 2014-15 and 2015-16. Counsel submitted that while Respondent No.2's conduct cannot be justified, it must be noted that the petition for non-compliance of Solar RPO was filed by the Appellant only on 3/7/2014 after the relevant period was over. The State Commission has therefore taken into consideration the fact that if Respondent No.2 is made to purchase RECs to make up the shortfall of three different FYs at the current rate of the RECs, it would impose financial burden on Respondent No.2. Taking into consideration practical difficulties, which may result in crippling Respondent No.2, the State Commission has imposed penalty of Rs.25,000/- on Respondent No.2. Pertinently, the State Commission has warned Respondent

No.2 that future non-compliance would be dealt with severely. Counsel submitted that the State Commission's order is, therefore, a balanced order and deserves no interference.

8. Mr. Umamathy, learned counsel appearing for Respondent No.2 has, while accepting that Respondent No.2 has not been able to fulfill its RPO obligation and has not purchased RECs, drawn our attention to Section 142 of the said Act which provides for punishment for non-compliance of the provisions of the said Act or rules or regulations made thereunder, or any direction issued by the State Commission. Counsel pointed out that the penalty which can be levied under this Section cannot exceed one lakh rupees. Pointing out the various difficulties faced by Respondent No.2, counsel submitted that the State Commission cannot be faulted for imposing penalty of Rs.25,000/- on Respondent No.2. Counsel submitted that discretion has been properly exercised by the State Commission after taking into consideration relevant circumstances. The exercise of discretion by the State Commission should not be therefore interfered with.

Counsel also pointed out various measures which are stated to have been taken by Respondent No.2 to avoid such defaults in future. Counsel submitted that the appeal be therefore dismissed.

9. Promotion of co-generation and generation of electricity from renewable sources of energy is the theme of power sector and all stakeholders of the power sector are expected to bear it in mind. RPO obligation and REC mechanism are the concepts devised to promote the generation of electricity from renewable sources of energy. Several judgments of this Tribunal to which our attention is drawn lay emphasis on the importance of RPO obligation and REC mechanism. To ensure that there is compliance of RPO obligation, provisions are made in relevant regulations for imposition of penalty.

10. In this case, the State Commission has come to a categorical finding that Respondent No.2 has failed to fulfill statutory RPO obligation and has been thoroughly remiss in

that behalf. It appears that while imposing penalty, the State Commission took into consideration, the fact that the Appellant had approached the State Commission after the relevant period was over i.e. only on 3/7/2014. The State Commission has observed that if the Appellant had approached at the relevant time, suitable action in the relevant FY could have been taken. The State Commission has observed that the Appellant is now seeking purchase of RECs by Respondent No.2 to make up for the shortfall of three different FYs at the current price of RECs, which would cause financial stress on Respondent No.2 and would also be not logical at this stage.

11. It is true as contended by counsel for the Appellant that delay on the part of the Appellant in approaching the State Commission does not provide a justification for Respondent No.2's default. Respondent No.2 ought to have fulfilled its RPO obligation. But if Respondent No.2, who is stated to be already under financial stress, is directed to purchase RECs to make up for the shortfall of three different FYs at the current

price of RECs, it may result in impacting its viability. It appears that in the peculiar facts of this case, therefore, the State Commission after taking this aspect into consideration, passed the impugned order.

12. However, there is no justification for the State Commission for imposing such meager penalty of Rs.25,000/-. Such meager penalty will defeat the object behind RPO obligation and REC mechanism. Imposition of such meager penalty may become a precedent and that may not be in the interest of stated object of promotion of generation of electricity from renewable energy sources, which is reflected more particularly in Section 86(1)(e) of the said Act. The State Commission has observed that penalty is a token and does not redeem the failure of Respondent No.2. We are informed that Respondent No.2 has again defaulted in fulfilling its RPO obligation. Since the said issue is not before us, we do not wish to comment on it. At the appropriate time we will deal with the legal issues raised by the Appellant. In the peculiar facts of this case, we remand the matter to the State

Commission. We direct the State Commission to hear the parties on the quantum of penalty and pass appropriate order. We make it clear that this order is restricted to the facts of this case and should not be treated as a precedent.

13. The appeal is disposed of in the aforestated terms.

14. Pronounced in the Open Court on this **28th day of April, 2016.**

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

✓ **REPORTABLE/~~NON-REPORTABLE~~**