IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

(APPELLATE JURISDICTION)

J U D G M E N T
IN
APPEAL NO. 278 OF 2015 & IA NO.455 OF 2015,
APPEAL NO. 293 OF 2015 & IA NO. 476 OF 2015,
APPEAL NO. 23 OF 2016 & IA NO. 61 OF 2016,
APPEAL NO. 62 OF 2016 & IA NO. 155 OF 2016 AND
APPEAL NO. 24 OF 2016 & IA NO. 65 OF 2016
ON THE FILE OF THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI

Dated: **2nd January, 2019**

Present: **HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER**
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

APPEAL NO. 278 OF 2015 &
IA NO.455 OF 2015
AND
APPEAL NO. 293 OF 2015 &
IA NO.476 OF 2015

IN THE MATTER OF

M/s JSW Steel Limited
Salem Works,
P.O. Potteneri, Mecheri T.K.
Salem District – 636 453 …. **Appellant(s)**

VERSUS

Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building,
No. 19-A, Rukmani Lakshmipathy Salai,
Marshalls Road, Egmore,
Chennai – 600 008 …. **Respondent(s)**

APPEAL NO. 23 OF 2016 &
IA NO. 61 OF 2016
AND
APPEAL NO. 62 OF 2016 &
IA NO. 155 OF 2016

IN THE MATTER OF

Tamil Nadu Newsprint and Papers Limited
67, Mount Road, Guindy,
Chennai – 600 032 **…. Appellant(s)**

VERSUS

Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building,
No. 19-A, Rukmani Lakshmipathy Salai,
Marshalls Road, Egmore,
Chennai – 600 008 **…. Respondent(s)**

APPEAL NO. 24 OF 2016 &
IA NO. 65 OF 2016

IN THE MATTER OF

TANFAC Industries Ltd.
Plot No. 14, SIPCOT Industrial Complex,
Cuddalore – 607 005 **…. Appellant(s)**

VERSUS

Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building,
No. 19-A, Rukmani Lakshmipathy Salai,
Marshalls Road, Egmore,
Chennai – 600 008 **…. Respondent(s)**

Counsel for the Appellant(s) … Shri Senthil Jagadeesan
Shri Rahul Balaji
Ms. Sonakshi Malhan

Counsel for the Respondent(s)… Shri S. Vallinayagam
Ms. Amali for Respondent

J U D G M E N T

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. M/s JSW Steel Limited, Tamil Nadu Newsprint and Papers Limited and TANFAC Industries Ltd (in short, ***'the Appellants'***), assailing the validity, legality and propriety of the Impugned Order dated 15.09.2014 in Petition No. 25 of 2012 and the order dated 16.09.2015 in Review Petition No. 1 of 2014 in respect of M/s JSW Steel Limited; Impugned Orders dated 13.11.2015 & 28.01.2016 in Petition Nos. M.P. No. 24 of 2012 & M.P. No. 36 of 2014 respectively in respect of Tamil Nadu Newsprint and Papers Limited; and Impugned Order dated 13.11.2015 in Petition No. M.P. No. 12 of 2013 in respect of TANFAC Industries Ltd, passed by Tamil Nadu Electricity Regulatory Commission, Chennai (in short, ***"Respondent Commission/TNERC)"***, have filed the instant Appeals, being Appeal Nos. 278 of 2015, 293 of 2015, 23 of 2016, 62 of 2016 and Appeal No. 24 of 2016 respectively, under Section 111 of the Electricity Act, 2013.

2. The Appellants have sought the following reliefs in the instant Appeals:

(I) Appeal No. 278 of 2015

(a) to set aside the order dated 15.09.2014 in M.P No.25 of 2012 and the order dated 16.09.2015 in RP 1 of 2014 as being a nullity since it has been passed contrary to the provisions of the Electricity Act, 2003 and the order of this Hon'ble Tribunal dated 26.04.2010 in Appeal No 57 of 2009, *Century Rayon Vs. MERC* and declare that the Appellant would be entitled to account for consumption of power generated from its 67.5 MW cogeneration plant towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations), Regulations, 2010;

(b) to pass such further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and thus render Justice.

(II) Appeal No. 293 of 2015

(a) to set aside the order dated 15.09.2014 in M.P No.25 of 2012 as being a nullity since it has been passed contrary to the provisions of the Electricity Act, 2003 and the order of this Hon'ble Tribunal dated 26.04.2010 Appeal No 57 of 2009, *Century Rayon Vs. MERC* and declare

that the Appellant would be entitled to account for consumption of power generated from its 67.5 MW cogeneration plant towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations), Regulations, 2010;

(b) to pass such further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and thus render Justice.

(III) <u>Appeal No. 23 of 2016</u>

(a) to set aside the order dated 13.11.2015 in M.P No.24 of 2012 as being a nullity since it has been passed contrary to the provisions of the Electricity Act, 2003 and the order of this Hon'ble Tribunal dated 26.04.2010 Appeal No 57 of 2009, *Century Rayon Vs. MERC* and declare that the Appellant would be entitled to account for consumption of power generated from its 61.5 MW cogeneration plant towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations), Regulations, 2010;

(b) to pass such further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and thus render Justice.

(IV) Appeal No. 62 of 2016

(a) to set aside the order dated 28.01.2016 in M.P No.36 of 2014 as being a nullity since it has been passed contrary to the provisions of the Electricity Act, 2003 and the order of this Hon'ble Tribunal dated 26.04.2010 Appeal No 57 of 2009, *Century Rayon Vs. MERC* and declare that the Appellant would be entitled to account for consumption of power generated from its 41 MW cogeneration plant towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations), Regulations, 2010;

(b) to pass such further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and thus render Justice.

(V) Appeal No. 24 of 2016

(a) to set aside the order dated 13.11.2015 in M.P No.12 of 2013 as being a nullity since it has been passed contrary

to the provisions of the Electricity Act, 2003 and the order of this Hon'ble Tribunal dated 26.04.2010 Appeal No 57 of 2009, *Century Rayon Vs. MERC* and declare that the Appellant would be entitled to account for consumption of power generated from its 2.3 MW cogeneration plant towards Renewable Purchase Obligation under the TNERC (Renewable Energy Purchase Obligations), Regulations, 2010;

(b) to pass such further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and thus render Justice.

Brief facts leading to the instant appeals are as follows:

3. The Appellants herein are the captive co-generators. The Appellant in Appeal Nos. 278 of 2015 and 293 of 2015 (M/s JSW Steel Ltd.) is an integrated steel plant and uses coke as primary fuel source in its manufacturing process. The Appellant in Appeal Nos. 23 of 2016 and 62 of 2016 (M/s Tamil Nadu Newsprint & Papers Ltd.) is a manufacturer of newsprint and printing and writing paper using bagasse and the Appellant in Appeal No. 24 of 2016 (M/s TANFAC Industries Ltd.) manufactures inorganic fluorine based chemicals. The steam is produced from waste

heat recovery. The process of power generation is clean and it is not using fossil fuel.

4. All the Appellants herein, on various dates approached the Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as TNERC/State Regulatory Commission) seeking a declaration that captive co-generation plant of the Appellants is not required to procure power from renewable sources of energy in order to meet their Renewable Purchase Obligation (RPO obligation). Hence, things thus stood.

5. TNERC/State Regulatory Commission erroneously held that the judgment of this Tribunal dated 26.04.2010 in *Century Rayon Vs. Maharashtra Electricity Regulatory Commission & Ors.* has been set aside by the Full Bench judgment of this Tribunal dated 02.12.2013 in *Lloyds Metal & Energy Ltd Vs. Maharashtra Electricity Regulatory Commission & Ors.* and, therefore, the Appellants would not be entitled to the relief as claimed by them. Not being satisfied with the impugned Order passed by the TNERC/State Regulatory Commission, the Appellants felt necessitated to present these Appeals for our consideration on the following issues for determination:

(A) Whether the appellants, co-generators are under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase Obligation?

(B) Whether the exemption granted to co-generation plants would depend on the type of fuel used by them?

(C) Whether the judgment of the Hon'ble Tribunal dated 26.04.2010 in *Century Rayon Vs. Maharashtra Electricity Regulatory Commission & Ors* has been set aside in entirety or only in part by the Full Bench Judgment of the Hon'ble Tribunal dated 02.12.2013 in *Lloyds Metal & Energy Ltd V. Maharashtra Electricity Regulatory Commission & ors.?*

(D) Whether the judgment of the Hon'ble Supreme Court in *Hindustan Zinc Ltd Vs. Rajasthan Electricity Regulatory Commission 2015) 12 SCC 611* would apply to the present appeals?

Shri Senthil Jagadeesan, learned counsel for the Appellants submitted the following submissions for our consideration:

6. The submissions of the learned counsel, Shri Senthil Jagadeesan, appearing for the Appellants in respect of Issue No. (A) that, the Act casts a duty on the State to promote generation of electricity from co-generation and renewable sources. As envisaged under Section 86(1)(e) of the Electricity Act, 2003 casts a specific obligation on the various State Electricity Regulatory Commissions constituted under the Electricity Act, 2003 to promote generation of electricity from cogeneration and renewable sources of energy. The said issue came up for consideration

before this Tribunal in *Century Rayon Vs Maharashtra Electricity Regulatory Commission & Ors.* and vide judgment dated 26.04.2010, this Tribunal held in paragraphs 26 & 28 and also relevant paragraphs 45(1) to (vi) and 46 of the said judgment wherein, he vehemently submitted that, by virtue of the said judgment captive consumers having cogenerating plants cannot be fastened with the obligation to procure electricity from renewable energy sources, as that would defeat the object of Section 86(1)(e) of the Electricity Act, 2003 and Cogenerating plants have to be treated at par with renewable energy generating plants for the purpose of RPO obligations. Further, counsel for the Appellant submitted that, the aforesaid judgment has been consistently followed and the position reiterated by this Tribunal in the following judgments:

i. *Emami Paper Mills Ltd. Vs. Odisha Electricity Regulatory Commission* in Appeal No. 54 of 2012 dated 30.01.2013

ii. *Vedanta Aluminium Ltd. Vs. Orissa Electricity Regulatory Commission* in Appeal No. 59 of 2012 dated 31.01.2013

iii. *Hindalco Industries Ltd. Vs. Uttar Pradesh Electricity Regulatory Commission & Ors*. in Appeal No. 125 of 2012 dated 10.04.2013

iv. *India Glycols Ltd. Vs. Uttarakhand Electricity Regulatory Commission & Ors*. in Appeal Nos. 112, 130 and 136 of 2014 dated 01.10.2014.

7. On Issue No. (B), the learned counsel for the Appellant submitted that, this Tribunal in *Century Rayon Case*, has held in paragraph 45 (VI) that " *The intention of the legislature is to clearly promote cogeneration in this industry generally **irrespective of the nature of the fuel used for such cogeneration** and not cogeneration or generation from renewable energy sources alone."* It was further held in paragraph 46 that, "*46…… While concluding, we must make it clear that the Appeal being generic in nature, our conclusions in this Appeal will be equally applicable to all co-generation based captive consumers who may be using **any** fuel…"* Further, he submitted that, the aforesaid findings have been followed by this Tribunal in *Emami Paper Mills case* and *Vedanta Aluminium case*, *Hindalco Industries case* and *India Glycols case*. It is pertinent to point out that none of these cases deal with cogeneration plants using renewable energy.

8. Regarding Issue No. (C), the counsel for the Appellant submitted that, the order of reference to the Full Bench dated 23.09.2013 *Lloyds Metal & Energy Ltd. Vs. Maharashtra Electricity Regulatory Commission & Ors.* order dated 23.09.2013 makes it clear that the limited question for reference to the Full Bench is as follows*:*

> *"Whether the distribution licensee could be fastened with the obligation to purchase a percentage of its consumption from co-generation irrespective of the fuel used under Section 86(1)(e) of the Act 2003.*

9. Further, the Full Bench judgment of this Tribunal dated 02.12.2013 in the case of *Lloyds Metal & Energy Ltd. Vs. Maharashtra Electricity Regulatory Commission & Ors.* reiterates the only question referred to it. It is evident that only paragraph 45(II) of the judgment in *Century Rayon Case* has been set aside by the Full Bench judgment in *Lloyds Metal Case* and not the *Century Rayon* judgment in its entirety. The effect of this being that the distribution licensee could not be compelled to procure electricity from fossil fuel based co-generation against its renewable purchase obligation. However it has no effect on the finding in *Century Rayon Case* that a cogeneration based captive power plant cannot be fastened with Renewable Purchase Obligation irrespective of the nature of the fuel used for such cogeneration. This is further fortified by the fact that this Tribunal has in *India Glycols Case* dated 01.10.2014, much after the judgment of the Full Bench in *Lloyds Metal case*, continued to rely on *Century Rayon case* in so far as the question whether cogeneration based captive power plant can at all be fastened with renewable Purchase Obligation is concerned.

10. Regarding Issue No. (D), the learned counsel for the Appellant submitted that, the Hon'ble Supreme Court *in Hindustan Zinc Ltd. Vs. Rajasthan Electricity Regulatory Commission (2015) 12 SCC 611,* was concerned with the challenge to validity of the Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007 and the Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations, 2010, which imposed renewable energy obligation on captive gencos and open access consumers. The Hon'ble Supreme Court was not considering the case of co-generation plants, as is involved in the present appeals before this Tribunal. Therefore, the said judgment would have no application whatsoever to the present appeals, as the appellants are not challenging the Regulations and are merely claiming exemption there from by virtue of section 86(1)(e) of the Electricity Act, 2003.

11. It is, further, submitted that all the judgments relied on by the Appellants deal with similar Regulations and this Tribunal has consistently held that co-generation plants are exempt from these regulations by virtue of the special status granted to them by virtue of section 86(1)(e) of the

Act. In fact, this Tribunal has proceeded to hold that even where the Regulations provide for the imposition of the Renewable Purchase Obligation on co-generation, the Regulations need to be read down in view of the interpretation of Section 86(1)(e) of the Electricity Act, 2003. He submitted that, in view of the above submission, it is further fortified by the fact that the Rajasthan Electricity Regulatory Commission has itself vide its order dated 23.03.2017 taken note of the above judgment of the Hon'ble Supreme Court and still went on to hold that no RPO obligation shall be fastened on co-generators. The issues have been set out in para 26 of the judgment.

12. The learned counsel for the Appellant submitted that, if the judgment of the Hon'ble Supreme Court actually covered co-generators as well, it is highly unlikely that the Rajasthan Electricity Regulatory Commission, whose Regulations were under challenge before the Hon'ble Supreme Court, would itself grant relief to the co-generators before it relying on the judgments of this Tribunal in *Century Rayon* and the line of cases cited supra.

13. Lastly, the counsel for the Appellant submitted that, a co-generation facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of

the Electricity Act, 2003; an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision; and as long as the co-generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities. Therefore, it is most respectfully submitted that, this Tribunal may please allow all the Appeals and hold that the Appellants herein, being co-generation plants are not under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase obligation and set aside the impugned order passed by the first Respondent/TNERC in the interest of justice and equity.

PER-CONTRA,
Shri S. Vallinayagam, learned counsel for the Respondent submitted the following submissions for our consideration:

14. The learned counsel, Shri S. Vallinayagam, appearing for the Respondent/TNERC, at the outset, submitted that, after due evaluation of the entire material available on record and case made out by the Appellants, the Respondent Commission/TNERC has rightly recorded the findings and in para 4.4 of the impugned order it would reveal that the findings of the Respondent Commission/TNERC truly reflect the intent and purport of the judgment of this Tribunal in Lloyds case in judgment dated

02.12.2013 in Appeal No. 53 of 2012 as held by this Tribunal in para 32 of the said judgment that fossil fuel based co-generating plants cannot be classified as Renewable Source of Energy. This Tribunal has made a slight distinction between fixing a percentage of Renewable Purchase Obligation and promotion of fossil fuel based co-generation in general by observing in para 39 of the said judgment that, “However, the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security.

15. The counsel appearing for the Respondent Commission/TNERC submitted that, in para 39 of the judgment of this Tribunal in Lloyd’s case in Appeal No.53 of 2012 would make it expressly clear that this Tribunal distinguished its decision in Century Rayon so as to make a subtle distinction between co-generating plants and non-conventional sources in terms of promotion and hence absolute parity as sought for by the Appellants is not maintainable. As per the Order dated 02.12.2013 in the Lloyd’s case in Appeal No.53 of 2012 was the last delivered one and, therefore, the impugned order which is in line with the said decision, does not call for interference. It is crystal clear from the said order that while the

non-conventional sources can be promoted by way of directing the Distribution Licensee or any other persons in the area of the Distribution Licensee to procure non-conventional sources in view of the express language in section 86 (1) (e) of the Electricity Act, 2003, the same cannot be strictly done in the case of co-generators who are entitled only for certain other promotional measures. This Tribunal chose to leave out the aspect of fixing a percentage for procurement of co-generation power from the purview of purchase obligation but added that such fossil fuel-based cogeneration can be promoted by other measures such as facilitating sale of surplus electricity and promotion of energy efficiency. The expression “other measures” occurring in para 39 of the Lloyds case amply proves that it denotes measures on promotion other than that of fixing of a percentage of procurement of non-conventional energy as envisaged under section 86 (1) (e) of the Electricity Act, 2003 and there cannot be a parity of treatment between fossil fuel based co-generation and generation from non-conventional sources in all aspects and Distribution Licensee cannot be compelled to procure fossil fuel based co-generation power. As a natural corollary, it also follows that a fossil fuel based co-generation plant cannot claim adjustment of its energy in the same manner as that of co-generation from non-conventional source and the fossil fuel based co-generating plants are to be treated like any other obligated entity for

fulfilling the regulation of the Commission though which they are entitled to be promoted by way of other measures such as facilitating sale of surplus power and promotion of energy efficiency. Therefore, the Respondent Commission/TNERC has rightly justified in passing the impugned order by assigning cogent reasons and interference by this Court does not call for.

16. Further, the learned counsel for the Respondent Commission/ TNERC submitted that, in the case of Hindustan Zinc Ltd. vs. RERC (Rajasthan Electricity Regulatory Commission) in C.A. No. 4417 of 2015 etc. the Hon'ble Apex Court in its order dated 13.05.2015 has settled the issue and, therefore, the issue has attained finality. The Hon'ble Apex Court has upheld the regulation of Rajasthan Electricity Regulatory Commission which extended the Renewable Purchase Obligation to Open Access Consumers and Captive Generators in addition to Distribution Licensee as intravires Articles 14, 19 (1) (g), 21 and 53 (A) (g) of the Constitution of India. The regulation of this Commission being *parimateria t*o the regulation of RERC and not having excluded the consumers owning grid connected CGPs from the purview of Renewable Purchase Obligation, the judgment of the Apex Court in Rajasthan ERC's case will be squarely applicable to TNERC and in the result the Co-generating Plants cannot seek exemption from Renewable Purchase Obligation or

claim adjustment of energy generated out of their co-generating plants. Therefore, there is no legal infirmity in the impugned order and hence the same is within the ratio laid down by this Tribunal and the Hon'ble Apex Court. On this count also interference by this Tribunal does not call for.

17. The counsel for the Respondent Commission contended that, the view of the Commission that co-generation from sources other than renewable sources cannot be exempted from Renewable Purchase Obligation has further been recognized and found favour in the revised National Tariff Policy, 2016. The following provision of National Tariff Policy, 2016 is reproduced below for reference:-

> *"(I) Pursuant to provisions of section 86 (1) (e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.*
>
> *Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs".*

The above provision of the National Electricity Policy, 2016 unequivocally states and unambiguously debars the exclusion of co-generation from sources other than renewable sources from the purview of RPO which means that fossil fuel co-generation is subject to RPO mechanism and exclusion from the purview of RPO cannot be claimed.

18. The submissions regarding claim of each appellant for non-conventional status in the set of appeals under reference are as follows:

(A) **Appeal No. 23 of 2016** filed by Tamil Nadu Newsprint and Papers Limited against the Orders of the Respondent Commission/TNERC in M.P. No. 24 of 2012 dated 13.11.2015:

19. The Appellant is the manufacturer of Newsprint and Printing and writing paper using bagasse. The Appellant has 6 boilers (Boiler No.1 to 6) of capacity varying from 60 Tonnes per Hour (TPH) to 125 TPH to produce high pressure steam. These boilers are fired using any combination of various fuel sources comprising mainly coal and oil and to a lesser extent the process left over such as pith and agro based products. The high-pressure steam produced in these boilers are used to power the 4 turbo generators of varying capacities (TG No.1 to 4 totaling to 61.12 MW) to produce electrical energy. In the process of power generation, the steam drops in pressure level and the resultant low

pressure is used for paper manufacturing process. In view of the same, the appellant claims that the process qualifies for co-generation status as it produces steam energy which is required in the paper manufacturing process and electricity simultaneously. There is also a Recovery boiler No.3 fired using black liquor as fuel. The steam produced by the Recovery Boiler No.3 is used to power turbo-generator (TG5) of capacity 20 MW. Black liquor is an industrial waste containing bio-mass that is produced during the manufacture of pulp from bagasse. Bagasse is a refuse material from sugarcane after extraction of sugarcane juice for sugar making. The appellant has therefore got registered the recovery boiler and TG5 as Renewable Energy Power Plant with National Load Despatch Centre, New Delhi and the benefit of Renewable Energy Certificates for the self-consumption of power generated from TG5 is being availed by the Appellant and therefore, there is no dispute with regard to TG5.

20. The present appeal is concerned, therefore, with respect to fastening of RPO to the power produced by TG1 to TG4 only. Here, it is to be noted that as per Regulation 2(1) of Renewable Energy Purchase Obligations Regulations 2010 and Regulation 2 (1) (g) of New and Renewable Energy Sources Regulations 2008 for the purpose of accounting for RPO, the source of power generation shall be Non-

Conventional and Renewable Energy Sources. But the steam produced by the Boilers No. 1 to 6 is by using any combination of coal, lignite, agro fuels, pith as fuel and such steam is used to power the TG1 to TG4 turbo generator sets. As no fuel which is primarily of renewable energy is used to power the stream, it does not qualify for accounting RPO and therefore, the claim of the appellant is not sustainable

(B) **Appeal No. 278 of 2015** filed by M/s. JSW Steel Limited against the Orders of the Respondent Commission/TNERC in M.P. No. 25 of 2012 dated 15.09.2014 (R.P. No.1 of 2014 dated 16.09.2015)

21. The Appellant's plant is an integrated steel plant. The Appellant states that it uses coke as primary fuel source in its manufacturing process as it is of higher calorific value. The hot exhaust gas from the coking oven and the blast furnace which has combustible residues such as carbon monoxide, hydrogen and nitrogen are used to power boilers and generate steam which in turn is used to power steam turbo generators (2 steam TGs of 30 MW and one TG of 7.5 MW) and produce electricity. That is to say, the waste heat in the form of exhaust from the coke oven and the blast furnace is the primary raw material in the captive power plant. The appellant claims that the process adopted by the them qualify

as 'bottoming cycle cogeneration' as it produces very high temperature waste industrial gas which in turn is used to generate electricity.

22. It is submitted that the generation of energy is based on waste heat recovery. However, the primary fuel used for in the production of high temperature waste industrial gas is coke. Coke is derived from coal. As no fuel which is primarily renewable in nature is used, the appellant plant has to be treated only as fossil fuel based co-generating plant and therefore not eligible for accounting for RPO under TNERC's Renewable Energy Purchase Obligations Regulations, 2010.

(C) **Appeal No. 24 of 2016** filed by TANFAC Industries Limited against the Orders of the Respondent Commission/TNERC in M.P. No. 12 of 2013 dated 13.11.2015:

23. The Appellant Company manufactures inorganic fluorine-based chemicals such as Aluminium Fluoride, Anhydrous Hydrofluoric acid, Sodium Silico Fluoride, Potassium Fluoride, Potassium bi-fluoride and various other fluorine-based chemicals and sulphuric acid. It states that it has installed a captive power plant of 2.3 MW capacity using the steam generated out of waste heat recovered from sulphuric acid plant. Sulphur is received in the form of powder or granules and is melted in sulphur pit

and pumped to sulphur furnace. The air blower system supplies air for sulphur burning and subsequent oxidation in the furnace. This air is dried using a drying tower that involves circulation of concentrated acid before entering furnace. The furnace is operating at a temperature of about 1000^0C and provided with adequate refractory lining to withstand high temperature. The formation of sulphur dioxide gas is an exothermic reaction and the waste heat generated is utilized in a waste heat recovery boiler. Subsequently the gases are fed to a convertor which is lined with heat resistant refractory and vanadium pentoxide catalyst is used in the convertor beds where sulphur dioxide is converted into sulphuric trioxide. The sulphur trioxide gas is taken to absorption towers *viz* Inter pass absorption tower and final absorption tower where acid is being circulated and 98.5% sulphuric acid is produced continuously

24. The Appellant company has installed a captive power plant of 2.3 MW capacity using the steam generated out of waste heat recovered from Sulphuric acid plant. It states that the process of power generation is clean and eco-friendly as it is not using fossil fuel. The steam produced from the waste heat recovery of sulphuric acid plant is used simultaneously for power generation as well for process steam using a pressure reducing valve.

25. The generation of energy is based on waste heat recovery. However, the process of production of high temperature waste heat is from sulphur which is not a fuel from a primarily renewable source. Hence, the Appellant's co-generation plant cannot be considered as renewable source based co-generating plant.

26. The counsel for the Respondent Commission/TNERC submitted that, the latest law on the scope and extent of promotion of co-generation was delivered by this Tribunal in Lloyd's case wherein the Tribunal pronounced a comprehensive judgment by referring to its earlier decision dated 26.04.2010 in Century Rayon in Appeal No.57 of 2009, the Report of the Standing Committee on Energy in enactment of Electricity Act, 2003, the amendment dated 20.1.2011 to Clause 6.4 of National Tariff Policy, Clauses 5.12.1 and 5.12.2 of National Electricity Policy by holding that the legislative intent is only to promote non-conventional sources and co-generation from non-conventional sources and not co-generation in any form. The observation of this Tribunal in para-24 of the Lloyd's case referring to the heading of clause 6.4 of National Tariff Policy for arriving at such conclusion and the observation at Para-15 categorically holding that electricity generation from fossil fuel is not a generation from non-

conventional source of energy or renewable source of energy has set at rest the legal position on the scope and extent of promotion co-generation from fossil fuel. A generator using renewable source for generating electrical energy can alone seek the benefits provided under the RPO Regulations. This Tribunal after arriving at such conclusion also proceeded to lay down the extent to which the co-generation from fossil fuel is permissible in para-39 of Lloyd's case which is re-produced below:

> *"39. Upon conjoint reading of the provisions of the Electricity Act, the National Electricity Policy, Tariff Policy and the intent of the legislature while passing the Electricity Act as reflected in the Report of the Standing Committee on Energy presented to Lok Sabha on 19.12.2002, we have come to the conclusion that a distribution company cannot be fastened with the obligation to purchase a percentage of its consumption from fossil fuel based co-generation under Section 86(1)(e) of the Electricity Act, 2003. Such purchase obligation 86(1)(e) can be fastened only from electricity generated from renewable sources of energy. However, the State Commission can promote fossil fuel-based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc."*

27. Further, he submitted that, it may be seen that this Tribunal also laid down the promotional measures which are to be borne in mind by the State Commissions in promotion of co-generation from the fossil fuel-

based co-generation such as facilitating sale of surplus energy in order to promote energy efficiency and grid security. This Tribunal, it is submitted, has restricted the scope of promotional measures to such co-generation by means of fossil fuel to a limited extent of sale of surplus power after adverting to the Clause 6.4 of National Tariff Policy, Clause 5.12.1 and 5.12.2 of National Electricity Policy and Report of Standing Committee on Energy and leaving out the accounting of energy from such sources for the purpose of exclusion from RPO. Hence the claim of the fossil fuel-based co-generation plants for promotional measures akin to generation of electricity from non-conventional sources and also co-generation from non-conventional sources is against the legislative intent and against the ratio of this Tribunal in Lloyd's case and the reliance of the appellant on Century Rayon and Hindalco is, therefore, misplaced and arises out of incorrect appreciation of the latest law laid down in Lloyd's case. It is, further, submitted that, the fact that the steam generated from other than Renewable source and used in the process of generation of electricity, such plant cannot be treated as co-generation from renewable sources. The legislative and executive intent of Parliament and Government of India respectively is only to promote non-conventional fuel or co-generation from non-conventional fuel. For seeking on parity with non-conventional sources, the fuel must be one of non-conventional source.

More importantly, the ratio laid down by the Supreme Court in Hindustan Zinc Vs RERC in its judgment dated 13.5.2015 in C.A.No.4417 of 2015 has set at rest the issue once for all by laying down the position of law that the captive plants or open access consumers are not outside the purview of RPO and the regulation of RERC was upheld in view of the stated objective of promotion of environment friendly measures.

28. The learned counsel for the Respondent Commission/TNERC submitted that, the Hindalco judgment dated 10.04.2013 in Appeal No.125 of 2012 was delivered in the context of the UPERC's inaction in giving effect to the judgment dated 26.4.2010 of this Tribunal in Century Rayon's case in Appeal No.57 of 2009. The Hindalco's judgment is nothing but reiteration of the ratio laid down in Century Rayon and no law was laid down in the said case unlike the Lloyd's case wherein a new law was laid down by this Tribunal and hence, the reliance of the Appellants on Hindalco's case is not sustainable. The Lloyd's case which laid down a new law, it is submitted, is the decision which holds the field at present and the law laid down in the Hindalco's case no longer holds the field. The said position is also strengthened by the subsequent judgment of Apex Court in Hindustan Zinc Vs RERC. The Commission in the impugned order rightly decided the issue based on the decision in the

Lloyd's case. The impugned order is perfectly valid in law as it is in line with the judgment of the Tribunal in Lloyd's case, the legislative intent of the Committee on Energy on the Electricity Bill, Clause 6.4 of NTP and Clause 5.12.1 and 5.12.2 of NEP and the judgment of the Apex Court in Hindustan Zinc case.

29. It is, further, submitted that, the Appellant has strenuously canvassed throughout the appeal that fastening of obligation on the Distribution Licensee to purchase power from co-generation plants irrespective of fuel used by such co-generating plant was the only question dealt with by the Tribunal in Lloyd's case and the question of accounting of power generated out of co-generation by the co-generation plants towards RPO was not dealt with. However, it is submitted that the understanding of the appellant in this regard are erroneous for the reason that the judgment of the Tribunal in Lloyd's case is a comprehensive one as it not only dealt with the fastening of the obligation on the Distribution Licensee in respect of power purchase from co-generation from NCE sources, but also dealt with elaborately the scope and extent of concessions that the power from co-generation is entitled to. The appellants understanding of the Lloyd's judgment is too narrow. The said judgment in Lloyd's case refers to the parliamentary intent on the scope of

promotion of co-generation power, the provisions in the National Policies, namely, NTP and NEP in regard to promotion of co-generation power and set out the extent up to which the power from co-generation is entitled to be promoted. Therefore, it is submitted that the impugned order is in line with the judgment in Lloyd's case which is the latest law on the subject and the reliance on Hindalco's case by the appellant is a misplaced one.

30. The learned counsel for the Respondent Commission/TNERC submitted that, the contention of the appellant that this respondent failed to consider its own order dated 21.6.2012 in M.P.No.31 of 2011 is also devoid of merits for the reason that the said order in M.P.No.31 of 2011 is anterior to the judgment of this Tribunal in Lloyd's case referred to above on the subject and it was decided with reference to Century Rayon's case at a time when there was no judgment on Lloyd's case. Therefore, the reliance of the said order dated 21.6.2012 of the Commission in M.P.No.31 of 2011 by the appellant is not sustainable in the light of the latest law laid down in Lloyd's case by the Tribunal and the judgment of the Apex Court in Hindustan Zinc case.

31. The counsel for the Respondent Commission/TNRC submitted that, in view of the facts and circumstances, as stated above, the instant

appeals filed by the Appellants are liable to be dismissed as devoid of merits.

ISSUEWISE CONSIDERATION & ANALYSIS:

32. The learned counsel for the Appellant and the learned counsel for the Respondent/State Regulatory Commission, at the outset, fairly submitted that, these five appeals may kindly be taken up together as the common reliefs are sought in all these appeals and an appropriate judgment may kindly be passed in the interest of justice and equity.

33. Submissions of the learned counsel appearing for the Appellant and the Respondent/State Regulatory Commission, as stated above, are placed on record.

34. After a marathon hearing of learned counsel for the Appellant and the Respondent/State Regulatory Commission and after careful critical evaluation of the entire relevant material available on records and going through the impugned Orders passed by the Respondent/State Regulatory Commission and after perusal of the written submissions filed by the respective counsel appearing for the Appellant and the Respondent/State Regulatory Commission, issues that arise for our consideration are as follows:

I. Whether the appellants, co-generators are under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase Obligation?

II. Whether the exemption granted to co-generation plants would depend on the type of fuel used by them?

III. Whether the judgment of this Tribunal dated 26.04.2010 in *Century Rayon vs. Maharashtra Electricity Regulatory Commission & Ors* has been set aside in entirety or only in part by the Full Bench Judgment of this Tribunal dated 02.12.2013 in *Lloyds Metal & Energy Ltd v. Maharashtra Electricity Regulatory Commission & ors.?*

IV. Whether the judgment of the Hon'ble Supreme Court in *Hindustan Zinc Ltd vs. Rajasthan Electricity Regulatory Commission 2015) 12 SCC 611* would apply to the present appeals?

RE: ISSUE NOS. (I) & (II)

Whether the appellants, co-generators are under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase Obligation?

Whether the exemption granted to co-generation plants would depend on the type of fuel used by them?

Since both the issues are interconnected we are taking and deciding them together

35. On these issues the learned counsel for the Appellant, at the outset, submitted that, as per section 86(1)(e) of the Electricity Act, 2003 casts a specific obligation on the various State Electricity Regulatory Commissions set up under the Act to promote generation of electricity from cogeneration and renewable sources of energy. This aspect of the matter has been considered by this Tribunal in *Century Rayon vs. Maharashtra Electricity Regulatory Commission & Ors*. (in paragraphs 45 & 46 of the judgment dated 26.04.2010). He vehemently submitted that, by virtue of the said judgment, Captive consumers having cogenerating plants cannot be fastened with the obligation to procure electricity from renewable energy sources, as that would defeat the object of section 86(1)(e) of the Electricity Act, 2003 and cogenerating plants have to be treated at par with renewable energy generating plants for the purpose of RPO obligations. The aforesaid judgment has been consistently followed by this Tribunal in several judgments i.e.:

(i) *Emami Paper Mills Ltd. Vs. Odisha Electricity Regulatory Commission* in Appeal No. 54 of 2012 dated 30.01.2013

(ii) *Vedanta Aluminium Ltd. Vs. Orissa Electricity Regulatory Commission* in Appeal No. 59 of 2012 dated 31.01.2013

(iii) *Hindalco Industries Ltd. Vs. Uttar Pradesh Electricity Regulatory Commission & Ors*. in Appeal No. 125 of 2012 dated 10.04.2013

(iv) *India Glycols Ltd. Vs. Uttarakhand Electricity Regulatory Commission & Ors*. in Appeal Nos. 112, 130 and 136 of 2014 dated 01.10.2014.

36. This Tribunal in the case of *Century Rayon vs. Maharashtra Electricity Regulatory Commission & Ors*. has held in para 45(vi) that, "*The intention of the legislature is to clearly promote cogeneration in this industry generally irrespective of the nature of the fuel used for such cogeneration and not cogeneration or generation from renewable energy sources alone.*" This Tribunal in para 46 the said judgment also held that, "*…. While concluding, we must make it clear that the Appeal being generic in nature, our conclusions in this Appeal will be equally applicable to all co-generation based captive consumers who may be using any fuel…*" The aforesaid findings has been followed by this Tribunal in the cases of Emami Paper Mills Ltd v Odisha Electricity Regulatory Commission; Vedanta Aluminium Ltd v Orissa Electricity Regulatory Commission; Hindalco Industries Ltd v Uttar Pradesh Electricity Regulatory Commission & Ors. and India Glycols Ltd v Uttarakhand Electricity Regulatory Commission & Ors. it is significant to note that none of these cases deals

with co-generation plant using renewable energy. The counsel for the Appellants submitted that, the appellants, co-generators, are not under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase Obligation. This aspect of the matter neither looked nor considered or followed and consistent view has been taken by this Tribunal in its several judgments, as stated above.Therefore, impugned Orders passed by the Respondent /State Regulatory Commission is liable to be set aside on this ground.

37. ***Per-contra****,* the learned counsel for the Respondent/State Regulatory Commission, inter-alia, contended and submitted that, the Respondent/State Regulatory Commission after thorough evaluation of the entire relevant material available on record and after taking into consideration the case made out by the Appellants has rightly recorded its findings in paragraph 4.4 of the impugned Order. It emerges that the finding of the Respondent/State Regulatory Commission truly reflect the intent and purport of the judgment of this Tribunal in Lloyds case in judgment dated 02.12.2013 in Appeal No. 53 of 2012 as held by this Tribunal in para 32 of the said judgment that fossil fuel based co-generating plants cannot be classified as Renewable Source of Energy. This Tribunal has made a slight distinction between fixing a percentage of

Renewable Purchase Obligation and promotion of fossil fuel based co-generation in general by observing in para 39 of the said judgment that, "However, the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security". Therefore, in view of the well settled law laid down by this Tribunal as held in para 39 of the judgment in Lloyd's case in Appeal No.53 of 2012 would make it expressly clear that this Tribunal distinguished its decision in Century Rayon so as to make a clear distinction between co-generating plants and non-conventional sources in terms of promotion and hence absolute parity as sought for the Appellants is not maintainable. Therefore, appellants, co-generators are under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase Obligation. Therefore, the Respondent/State Regulatory Commission has rightly justified in passing the impugned order by assigning the cogent reasons which is in line with the said decision and, hence, interference by this Court does not call for.

38. Further, he submitted that, it is crystal clear from the said order that while the non-conventional sources can be promoted by way of directing the Distribution Licensee or any other persons in the area of the

Distribution Licensee to procure non-conventional sources in view of the express language in section 86 (1) (e) of the Electricity Act, 2003, the same cannot be strictly done in the case of co-generators who are entitled only for certain other promotional measures. This Tribunal chose to leave out the aspect of fixing a percentage for procurement of co-generation power from the purview of purchase obligation but added that such fossil fuel-based cogeneration can be promoted by other measures such as facilitating sale of surplus electricity and promotion of energy efficiency. The expression "other measures" occurring in para 39 of the Lloyds case amply proves that it denotes measures on promotion other than that of fixing of a percentage of procurement of non-conventional energy as envisaged under section 86 (1) (e) of the Electricity Act, 2003 and there cannot be a parity of treatment between fossil fuel based co-generation and generation from non-conventional sources in all aspects and Distribution Licensee cannot be compelled to procure fossil fuel based co-generation power. As a natural corollary, it also follows that a fossil fuel based co-generation plant cannot claim adjustment of its energy in the same manner as that of co-generation from non-conventional source and the fossil fuel based co-generating plants are to be treated like any other obligated entity for fulfilling the regulation of the Commission though they are entitled to be promoted by way of other measures such as facilitating

sale of surplus power and promotion of energy efficiency. Therefore, the Respondent/State Regulatory Commission has rightly justified in passing the impugned order by assigning cogent reasons. The Appellant has failed to make out any case before the Respondent/State Regulatory Commission and this Tribunal also. Therefore, the Order impugned passed by the Respondent/State Regulatory Commission is liable to be upheld.

OUR CONCLUSION ON ISSUE NOS. (I) & (II)

39. The appellants are all captive co-generators. As per section 2(12) of the Electricity Act, 2003 defines cogeneration as under:

> *"Cogeneration" means a process which simultaneously produces two or more forms of useful energy (including electricity).*

The State to promote generation of electricity from co-generation and renewable sources as envisaged under section 86(1)(e) of the Electricity Act, 2003 casts a specific obligation on the various State Electricity Regulatory Commissions set up under the Act to promote generation of electricity from cogeneration and renewable sources of energy. The aforesaid question arose for consideration before this Tribunal in the case of *Century Rayon vs. Maharashtra Electricity Regulatory Commission & Ors*. reported in

2010 SCC OnLine APTEL 37 : [2010] APTEL 37 vide judgment dated 26.04.2010 wherein paragraphs 45 & 46 of the judgment read hereunder:

"45. Summary of our conclusions is given below:-

(I) The plain reading of Section 86(1)(e) does not show that the expression 'co-generation' mean Judgment in Appeal No. 57 of 2009 cogeneration from renewable sources alone. The meaning of the term 'co- generation' has to be understood as defined in definition Section 2 (12) of the Act.

(II) As per Section 86(1)(e), there are two categories of `generators namely (1) co-generators (2) Generators of electricity through renewable sources of energy. It is clear from this Section that both these categories must be promoted by the State Commission by directing the distribution licensees to purchase electricity from both of these categories.

(III) The fastening of the obligation on the co-generator to procure electricity from renewable energy procures would defeat the object of Section 86 (1)(e).

(IV) The clear meaning of the words contained in Section 86(1)(e) is that both are different and both are required to be promoted and as such the fastening of liability on one in preference to the other is totally contrary to the legislative interest.

(V) Under the scheme of the Act, both renewable source of energy and cogeneration power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that cogeneration plants, who provide many number of benefits to environment as well as to the

public at large, are to be entitled to be treated at par with the other renewable energy sources.

(VI) The intention of the legislature is to clearly promote cogeneration in this industry generally irrespective of the nature of the fuel used for such cogeneration and not cogeneration or generation from renewable energy sources alone.

46. In view of the above conclusions, we are of the considered opinion that the finding rendered by the Commission suffers from infirmity. Therefore, the same is liable to be set side. Accordingly, the same is set aside. Appeal is allowed in terms of the above conclusions as well as the findings referred to in aforesaid paras 16,17,22 and 44. While concluding, we must make it clear that the Appeal being generic in nature, our conclusions in this Appeal will be equally applicable to all co-generation based captive consumers who may be using any fuel. We order accordingly. No costs." *[Emphasis supplied]*

40. It is manifest on the face of the judgment, as stated supra, the Captive consumers having cogenerating plants cannot be fastened with the obligation to procure electricity from renewable energy sources, as that would defeat the object of section 86(1)(e) of the Electricity Act, 2003 and cogenerating plants have to be treated at par with renewable energy generating plants for the purpose of RPO obligations. It is pertinent to note that the aforesaid judgment has been consistently followed by this Tribunal in several cases e.g. *Emami Paper Mills Ltd. Vs. Odisha*

Electricity Regulatory Commission in Appeal No. 54 of 2012 dated 30.01.2013 reported in 2013 SCC OnLine APTEL 23 : [2013] APTEL 74 (Para 5, paras 38 to 40, which reads hereunder:

> *"5. In the light of the rival contentions, the following question may arise for consideration: "Whether the Appellant, the co-generator is under a legal obligation to purchase power from the renewable sources of energy for meeting the Renewable Purchase Obligation of its captive load?"*
>
> *…. …. ….*
>
> *38. As laid down by this Tribunal in Century Rayon case, we reiterate that the mere use of fossil fuel would not make cogeneration plant as a conventional plant. The State Commission cannot give its own interpretation on this aspect which is not available in the Regulations and which is against the ratio and the interpretation of provision given in the judgement by this Tribunal.*
> *39. We feel anguished to remark that unfortunately, the State Commission has not followed the judicial propriety by ignoring the well laid principles contained in the judgement of this Tribunal, which is binding on the authority.*
>
> *40. Summary of our findings: i) This Tribunal in its judgment in Appeal No.57 of 2009 has specifically observed that the intention of the legislature is to clearly promote the cogeneration also irrespective of the nature of the fuel used and fastening of the obligation on the cogenerator would defeat the object of Section 86(1)(e). The Tribunal also mentioned in the above judgment that the conclusion in Appeal No.57 of 2009 of being generic in nature, would apply to all the co-generation based captive consumers who may be using any fuel. Therefore, reasoning given by the*

State Commission for distinguishing the judgment of this Tribunal, which is binding on the State Commission, is wrong.

ii) The definition of the obligated entity would not cover a case where a person is consuming power from co-generation plant. iii) The State Commission by the impugned order, in order to remove difficulties faced by the obligated entities, has clarified that the obligation in respect of co-generation can be met from solar and nonsolar sources but the solar and non-solar purchase obligation has to be met mandatorily by the obligated entities and consuming electricity only from the co-generation sources shall not relieve any obligated entity. When such relaxation has been made, the same relaxation must have been allowed in respect of consumers meeting electricity consumption from captive Co-generation Plant in excess of the total RCPO Obligations. Failure to do so would amount to violation of Section 86(1)(e) of the electricity Act, which provides that both cogeneration as well as generation of electricity from renewable source of energy must be encouraged as per the finding of this Tribunal in Appeal No.57 of 2009. Unfortunately the State Commission has failed to follow the judgment given by this Tribunal in Century Rayon case." *[Emphasis supplied]*

Therefore, in view of the aforesaid judgment, this Tribunal consistently followed and position reiterated by this Tribunal in the above judgments. Inspite of consistent view taken by this Tribunal, the Respondent/State Regulatory Commission has failed to take judicial note and appreciate the matter and on contrary, proceeded to pass the impugned Order without evaluation of the material

available on records and the case made out by the Appellant. We are of the considered view that the Respondent/State Regulatory Commission has failed to consider the same and on contrary has passed the impugned order. Therefore, the impugned order passed by the Respondent/State Regulatory Commission is liable to be set aside on this ground. **Hence, we answered these issues in favour of the Appellants**.

RE: ISSUE NO. (III)

Whether the judgment of this Tribunal dated 26.04.2010 in Century Rayon vs. Maharashtra Electricity Regulatory Commission & Ors has been set aside in entirety or only in part by the Full Bench Judgment of this Tribunal dated 02.12.2013 in Lloyds Metal & Energy Ltd v. Maharashtra Electricity Regulatory Commission & ors.?

41. On this issue, the learned counsel for the Appellants submitted that, the case of Lloyds Metal & Energy Ltd. v Maharashtra Electricity Regulatory Commission & Ors has been referred to the Full Bench of this Tribunal for re-examination of interpretation given in the Century Rayon case Whether the distribution licensee could be fastened with the obligation to purchase a percentage of its consumption from co-generation irrespective of the fuel used under Section 86(1)(e) of the Electricity Act, 2003. The Full Bench of this Tribunal, in Lloyds Metal case, after

thorough evaluation of the entire material available on records and after considering the submissions of the learned counsel appearing for both the parties, has set aside only the findings in so far as recorded at paga 45(II) of the judgment in Century Rayon case and not the Century Rayon judgment in its entirety. This aspect of the matter has neither been looked into nor considered by the Respondent/State Regulatory Commission and without application of mind hold that the entire judgment of the Century Rayon case has been set aside. The said reasoning given by the Respondent/State Regulatory Commission and placing reliance on the judgment in totality is unsustainable in law. Further, the counsel for the Appellants, to substantiate his submission, quick to point out and placed reliance on the judgment of this Tribunal in *India Glycols case* dated 01.10.2014, wherein this Tribunal, much after the judgment of the Full Bench in *Lloyds Metal case*, continued to rely on *Century Rayon case* in so far as the question whether cogeneration based captive power plant can at all be fastened with renewable Purchase Obligation is concerned as held in para 10 of the said judgment. Therefore, impugned Orders passed by the Respondent/State Regulatory Commission are liable to be vitiated on this ground also.

42. *Per-contra*, the learned counsel for the Respondent/State Regulatory Commission, inter-alia, contended and substantiated the reasoning assigned by the Respondent/State Regulatory Commission in the impugned Orders which is in consonance with the reasoning assigned in the judgment of this Tribunal in Lloyds Metal case and rightly considered in paragraph 39 of the said judgment. Therefore, there is no substance in the submissions of the learned counsel for the Appellants. The Respondent/State Regulatory Commission has rightly justified by assigning the valid and cogent reasons passed just and reasonable orders. Hence, interference by this Tribunal does not call for.

OUR CONCLUSION ON ISSUE NO. (III)

43. It is pertinent to note that the order of reference to the Full Bench dated 23.09.2013 in the case of *Lloyds Metal & Energy Ltd. Vs. Maharashtra Electricity Regulatory Commission & Ors.* order dated 23.09.2013 makes it clear that the limited question for reference to the Full Bench is as follows:

> ***"Whether the distribution licensee could be fastened with the obligation to purchase a percentage of its consumption from co-generation irrespective of the fuel used under Section 86(1)(e) of the Act 2003.***

Registry is directed to get the Administrative Order from the Chairperson to post it before the Full Bench for re-examination of the interpretation given in the Century Rayon Case on this question."

The Full Bench of this Tribunal vide its order dated 02.12.2013 in the case of *Lloyds Metal & Energy Ltd. vs. Maharashtra Electricity Regulatory Commission & Ors., after thoughtful consideration of all the relevant material available on records,* answered the question as referred for consideration which read thus:

"This important aspect has not been considered in the Century Rayon judgment, where in this Tribunal had held that the Sate commission has to promote both co-generation as well as generation of electricity from renewable sources of energy. Accordingly, we feel that the State Commission could promote the fossil fuel based co-generation by any other measures such as facilitate sale of electricity from such sources, grid connectivity, etc. by the State Commission could not compel the Distribution Licensee to procure electricity from fossil fuel based co-generation against the purchase obligation to be specified under Section 86(1)(e) of the Electricity Act, 2003." *[Emphasis supplied]*

It is evident that only paragraph 45(II) of the judgment in *Century Rayon Case* has been set aside by the Full Bench judgment in *Lloyds Metal Case* and not the *Century Rayon* judgment in its entirety. The effect of this being that the distribution licensee could not be compelled to procure electricity from fossil fuel based co-

generation against its renewable purchase obligation. However, it has no effect on the finding in *Century Rayon Case* that a cogeneration based captive power plant cannot be fastened with Renewable Purchase Obligation irrespective of the nature of the fuel used for such cogeneration.

44. It is, further, fortified by the fact that this Tribunal has in *India Glycols Case* dated 01.10.2014, much after the judgment of the Full Bench in *Lloyds Metal case*, continued to rely on *Century Rayon case* in so far as the question whether cogeneration based captive power plant can at all be fastened with renewable Purchase Obligation is concerned as held in para 10, 20 to 23 which read as under:

> *"10. The only issue that arise for our consideration is whether cogeneration based captive power plant can at all be fastened with Renewable Purchase Obligation (RPO) and whether the Notification, dated 3.11.2010, could have at all fastened on each of the Appellants, in defiance of the statutory mandate of Section 86(1)(e) of the Electricity Act, 2003 as also ignoring the decision dated 26.4.2010 of this Appellate Tribunal in Century Rayon case?*
>
> *….. …… ……. ……. ….*
>
> *20. In view of the above considerations and analysis, we note that the impugned order passed by the State Commission suffers from the vice of illegality and the same is against the legal proposition laid down by this Appellate Tribunal in its*

judgment, dated 26.4.2010, in Appeal No. 57 of 2009 in the case of Century Rayon vs MERC. The approach of the State Commission in passing the impugned orders appears to be quite illegal, invalid and unjust, which cannot be appreciated by this Appellate Tribunal by any stretch of imagination.

21. Consequently, we observe that the impugned orders, dated 13.3.2014 (subject matter in Appeal No. 112 of 2014) and, dated 10.4.2014 (subject matter in Appeal Nos. 130 and 136 of 2014), suffer from illegality and perversity. We find force in the submissions of the Appellants and they are entitled to the relief claimed by them before the State Commission in the form of filing reply to show cause notices and also by filing petitions. The findings recorded by the State Commission in the impugned order, are illegal, perverse and are based on improper and erroneous appreciation of the facts and law. The approach adopted by the State Commission is also not appreciable as the State Commission should have exercised its power to relax in order to implement the judgment, dated 26.4.2010, passed by this Appellate Tribunal in Appeal No. 57 of 2009 in the case of Century Rayon vs. MERC, and also to give relief to the Appellants-petitioners. All the findings recorded by the State Commission in the impugned orders, so far as the Appellants-petitioners are concerned, are hereby set-aside and the impugned orders are liable to be quashed. Accordingly, in view of the above findings and observations, the issue is decided in favour of the Appellant and against the Respondent.

22. We further observe and make it clear that each of the Appellants, who filed the petitions before the State

Commission, claiming that each of the them being a co-generation based captive power plant/captive user was under no obligation to make purchases of Renewable Energy Certificates under the Principal Regulations, 2010, is entitled to the benefit of the judgment, dated 26.4.2010, passed by this Appellate Tribunal in Appeal No. 57 of 2009 in the case of Century Rayon vs. MERC, and they are accordingly, exempted from the obligation of procuring renewable energy and fulfilling their renewable energy obligation for FYs 2011-12, 2012-13 and 2013-14 (upto 27.12.2013).

23. SUMMARY OF OUR FINDINGS

The Co-generation based Captive Power Plant/Captive user cannot be fastened with renewable purchase obligation as provided under UERC (Compliance of RPO) Regulations, 2010, as subsequently, amended by UERC (Compliance of RPO) (First Amendment) Regulations, 2013. The judgment, dated 26.4.2010 of this Appellate Tribunal in Appeal No. 57 of 2009 in the case of Century Rayon vs. MERC, whereby the provisions of Section 86(1)(e) of the Electricity Act, 2003 were interpreted and in compliance of which the learned State Commission has amended the definition 'Obligated entity' as was then existing in UERC (Compliance of RPO) Regulations, 2010 by UERC (Compliance of RPO) (First Amendment) Regulations, 2013, shall be held to be applicable from the date of the judgment itself. Though, in compliance of the said judgment, dated 26.4.2010, the Regulations were amended in the year 2013 by the State Commission. It was a fit case where the State Commission should have exercised its power to relax according to its own Regulations in order to give

effect to the judgment, dated 26.4.2010, passed by this Appellate Tribunal in Appeal No. 57 of 2009, in the case of Century Rayon vs. MERC in letter and spirit, in order to give relief to the Co-generation based Captive Power Plants/Captive users entitled to it."

[Emphasis supplied]

In view of the aforementioned facts and circumstances, we are of the considered view that the reasoning assigned by the Respondent/State Regulatory Commission cannot be sustainable; hence, it is liable to be vitiated. Therefore, answered the issue No. (III) in favour of the Appellants.

RE: ISSUE NO. (IV)

Whether the judgment of the Hon'ble Supreme Court in Hindustan Zinc Ltd vs. Rajasthan Electricity Regulatory Commission 2015) 12 SCC 611 would apply to the present appeals?

45. The learned counsel for the Appellants, on this issue, submitted that, the Hon'ble Supreme Court *in Hindustan Zinc Ltd. vs. Rajasthan Electricity Regulatory Commission (2015) 12 SCC 611,* was concerned with the challenge to validity of the Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007 and the Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and

Renewable Purchase Obligation Compliance Framework) Regulations, 2010, which imposed renewable energy obligation on captive generators and open access consumers wherein the Hon'ble Supreme Court was not considering the case of co-generation plants, as is involved in the present appeals before this Tribunal. Therefore the said judgment would have no application whatsoever to the present appeals, as the appellants are not challenging the Regulations and are merely claiming exemption therefrom in the light of section 86(1)(e) of the Electricity Act, 2003.

46. Further, the counsel for the Appellant contended that, all the judgments relied on by the appellants deal with similar Regulations and this Tribunal has consistently held that co-generation plants are exempted from these regulations by virtue of the special status granted to them in view of section 86(1)(e) of the Electricity Act, 2003. In fact, this Tribunal has proceeded to hold that even where the Regulations provide for the imposition of the Renewable Purchase Obligation on co-generation, the Regulations need to be read down in view of the interpretation of Section 86(1)(e) of the Electricity Act, 2003. The above submission is further fortified by the fact that the Rajasthan Electricity Regulatory Commission has itself vide its order dated 23.03.2017 taken note of the above judgment of the Hon'ble Supreme Court as held in relevant para 15 of the

judgment and still went on to hold that no RPO obligation shall be fastened on co-generators. The said issues have been referred in para 26 of the judgment. The answer to this issue after taking note of the judgments of this Tribunal in Century Rayon case, Emami Paper Mills case, Vedanta Aluminium case, Hindalco Industries case and India Glycols case. In view of the well settled legal position, Commission is of the considered view that no RPO liability shall be fastened on such generators who generate electricity through Waste Heat Recovery for their own purpose and consume it, subject to the condition that generation from Waste Heat Recovery generation plant is in excess of the total RPO required to be complied by the CPP. Therefore, counsel for the Appellants submitted that, if the judgment of the Hon'ble Supreme Court actually covered co-generators as well, it is highly unlikely that the Rajasthan Electricity Regulatory Commission, whose Regulations were under challenge before the Hon'ble Supreme Court, would itself grant relief to the co-generators before it relying on the judgments of this Tribunal in *Century Rayon* case. Therefore, he submitted that, a co-generation facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 and an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act cannot be fastened with renewable purchase obligation under the same provision and as long as the co-

generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities. Therefore, he most respectfully submitted that, this Tribunal may please allow all the Appeals and hold that the appellants herein, being co-generation plants, are not under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase obligation in the interest of justice and equity.

47. *Per-contra,* Shri S. Vallinayagam, learned counsel for the Respondent/ State Regulatory Commission submitted that, in the case of Hindustan Zinc Ltd. vs. RERC (Rajasthan Electricity Regulatory Commission) in C.A. No. 4417 of 2015 etc., the Hon'ble Apex Court in its order dated 13.05.2015 has settled the issue and, therefore, the issue has attained finality. The Hon'ble Apex Court has upheld the regulation of Rajasthan Electricity Regulatory Commission which extended the Renewable Purchase Obligation to Open Access Consumers and Captive Generators in addition to Distribution Licensee. The regulation of this Commission being *parimateria t*o the regulation of RERC and not having excluded the consumers owning grid connected CGPs from the purview of Renewable Purchase Obligation, the judgment of the Apex Court in Rajasthan Electricity Regulatory Commission's case will be squarely

applicable to Respondent/TNERC and in the result the Co-generating Plants cannot seek exemption from Renewable Purchase Obligation or claim adjustment of energy generated out of their co-generating plants. Therefore, there is no legal infirmity in the impugned order and, hence, the same is within the ratio laid down by this Tribunal and the Hon'ble Apex Court. Therefore, interference by this Tribunal does not call for on this count also.

48. The counsel for the Respondent Commission contended that, the view of the Commission that co-generation from sources other than renewable sources cannot be exempted from Renewable Purchase Obligation has further been recognized and found favour in the revised National Tariff Policy, 2016. The following provision of National Tariff Policy, 2016 is reproduced below for reference:

> *"(I) Pursuant to provisions of section 86 (1) (e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.*

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs".

[Emphasis supplied]

The above provision of the National Electricity Policy, 2016 unequivocally states and unambiguously debars the exclusion of co-generation from sources other than renewable sources from the purview of RPO which means that fossil fuel co-generation is subject to RPO mechanism and exclusion from the purview of RPO cannot be claimed.

49. Further, the counsel for the Respondent/State Regulatory Commission contended that the latest law on the scope and extent of promotion of co-generation was delivered by this Tribunal in Lloyd's case wherein the Tribunal pronounced a comprehensive judgment by referring to its earlier decision dated 26.04.2010 in Century Rayon in Appeal No.57 of 2009, the Report of the Standing Committee on Energy in enactment of Electricity Act, 2003, the amendment dated 20.1.2011 to Clause 6.4 of National Tariff Policy, Clauses 5.12.1 and 5.12.2 of National Electricity Policy by holding that the legislative intent is only to promote non-conventional sources and co-generation from non-conventional sources and not co-generation in any form. The observation of this Tribunal in para-24 of the Lloyd's case referring to the heading of clause 6.4 of

National Tariff Policy for arriving at such conclusion and the observation at Para-15 categorically holding that electricity generation from fossil fuel is not a generation from non-conventional source of energy or renewable source of energy has set at rest the legal position on the scope and extent of promotion of co-generation from fossil fuel. A generator using renewable source for generating electrical energy can alone seek the benefits provided under the RPO Regulations. This Tribunal after arriving at such conclusion also proceeded to lay down the extent to which the co-generation from fossil fuel is permissible in para-39 of Lloyd's case which is re-produced below:

> *"39. Upon conjoint reading of the provisions of the Electricity Act, the National Electricity Policy, Tariff Policy and the intent of the legislature while passing the Electricity Act as reflected in the Report of the Standing Committee on Energy presented to Lok Sabha on 19.12.2002, we have come to the conclusion that a distribution company cannot be fastened with the obligation to purchase a percentage of its consumption from fossil fuel based co-generation under Section 86(1)(e) of the Electricity Act, 2003. Such purchase obligation 86(1)(e) can be fastened only from electricity generated from renewable sources of energy. However, the State Commission can promote fossil fuel-based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc."*

[Emphasis supplied]

50. The counsel for the Respondent/State Regulatory Commission submitted that, the Hindalco's judgment is nothing but reiteration of the ratio laid down in Century Rayon and no law was laid down in the said case unlike the Lloyd's case wherein a new law was laid down by this Tribunal and hence, the reliance of the Appellants on Hindalco's case is not applicable. The Lloyd's case which laid down a new law, it is submitted, is the decision which holds the field at present and the law laid down in the Hindalco's case no longer holds the field. The said position is also strengthened by the subsequent judgment of Apex Court in Hindustan Zinc Vs RERC. The Commission in the impugned order rightly decided the issue based on the decision in the Lloyd's case. The impugned order is perfectly valid in law as it is in line with the judgment of the Tribunal in Lloyd's case, the legislative intent of the Committee on Energy on the Electricity Bill, Clause 6.4 of NTP and Clause 5.12.1 and 5.12.2 of NEP and the judgment of the Apex Court in Hindustan Zinc case. The learned counsel for the Respondent/State Regulatory Commission, further, submitted that, the Appellant has strenuously canvassed throughout the appeal that fastening of obligation on the Distribution Licensee to purchase power from co-generation plants irrespective of fuel used by such co-generating plant was the only question dealt with by the Tribunal in Lloyd's case and the question of accounting of power

generated out of co-generation by the co-generation plants towards RPO was not dealt with. However, it is submitted that the understanding of the appellant in this regard are erroneous for the reason that the judgment of the Tribunal in Lloyd's case is a comprehensive one as it not only dealt with the fastening of the obligation on the Distribution Licensee in respect of power purchase from co-generation from NCE sources, but also dealt with elaborately the scope and extent of concessions that the power from co-generation is entitled to. The appellants understanding of the Lloyd's judgment is too narrow. The said judgment in Lloyd's case refers to the parliamentary intent on the scope of promotion of co-generation power, the provisions in the National Policies, namely, NTP and NEP in regard to promotion of co-generation power and set out the extent up to which the power from co-generation is entitled to be promoted. Therefore, it is submitted that the impugned order is in line with the judgment in Lloyd's case which is the latest law on the subject and the reliance on Hindalco's case by the appellant is a misplaced one. The learned counsel for the Respondent/State Regulatory Commission submitted that, the Respondent/State Regulatory Commission, after due consideration of the entire relevant materials available on records and in the light of the well settled position of law laid down by this Tribunal and the Hon'ble Apex Court, has rightly justified in passing the just and reasonable order and,

therefore, interference by this Tribunal does not call for. Hence, the appeals filed by the Appellants are liable to be dismissed as devoid of merits.

OUR CONCLUSION ON ISSUE NO. (IV)

51. In the case of Hindustan Zinc Ltd. vs. Rajasthan Electricity Regulatory Commission (2015) 12 SCC 611, wherein the validity of the Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007 and Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations, 2010, has been questioned which imposed renewable energy obligation on captive gencos and open access consumers. It is significant to note that, the Hon'ble Apex Court was not considering the case of co-generation plants, as rightly pointed out by the learned counsel for the Appellants, is involved in the present appeals before this Tribunal. Therefore the said judgment is not applicable to the facts and circumstances of the instant appeals as the appellants are not questioning the correctness of the Regulations and are merely claiming exemption therefrom as envisaged under Section 86(1)(e) of the Electricity Act, 2003. It is also rightly pointed out by the learned counsel for the Appellants that, this Tribunal has consistently held

that co-generation plants are exempted from these regulations by virtue of the special status granted to them in the light of Section 86(1)(e) of the Electricity Act, 2003. It is not in dispute that this Tribunal has proceeded to hold that even where the Regulations provide for the imposition of the Renewable Purchase Obligation on co-generation, the Regulations need to be read down in view of the interpretation of Section 86(1)(e) of the Electricity Act, 2003.

52. The above contention is further fortified by the fact that, Rajasthan Electricity Regulatory Commission has itself vide its Order dated 23.03.2017 in Petition Nos. RERC/839/16 and RERC/840/16 in para 15(xi) wherein considered that, *"Various Special Leave Petitions (SLPs) were filed before the Hon'ble Supreme Court of India challenging the order dated 31.08.2012 of Hon'ble Division Bench of Rajasthan High Court and the Hon'ble Supreme Court of India vide order dated 13.05.2015 upheld the validity of the RPO Regulations, 2007 and RPO Compliance Regulations, 2010."* Further, it referred in para 15(xxi) that, *"In view of the judgments passed by the Hon'ble Supreme Court of India, Hon'ble High Court of Rajasthan and the Hon'ble APTEL upholding the validity of the Regulations of 2007 & 2010 and the directions issued by this Commission, it is, therefore, requested that the completed data regarding the Energy*

Generation and RPO Compliance may be ordered to be submitted to the Petitioner for assessment of RE Surcharge and after assessment of the shortfall, the Respondents be directed to pay the RE Surcharge assessed on the basis of the shortfall in RPO Compliance for the period 23.03.2007 to 22.12.2010" and also followed the well settled position of law and consistently followed is that there cannot be RPO being imposed on co-generation facilities wherein they discussed and considered the judgment of this Tribunal i.e. Century Rayon, Emami Paper Mills Ltd, Vedanta Aluminium Ltd, Hindalco Industries Ltd, India Glycols Ltd and observed that, as per the above judgment, it is a settled position of law that an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision. Further, consumer meeting electricity consumption from captive co-generation plant in excess of the total specified RPO from waste heat technology does not have any obligation to procure electricity from other renewable source of electricity separately from solar or non-solar. Above position is followed by the various State Electricity Regulatory Commissions in the country. The Rajasthan Electricity Regulatory Commission has also considered Section 81(1)f) of the Electricity Act, 2003 and also taken note of the judgment of this Tribunal passed in Century Rayon vs Maharashtra Electricity Regulatory

Commission & Ors in Appeal No. 57 of 2009 dated 26.04.2010, which reads as under:

"Summary of our conclusions is given below:-

(I) The plain reading of Section 86(1)(e) does not show that the expression 'co-generation' means cogeneration from renewable sources alone. The meaning of the term 'co-generation' has to be understood as defined in definition Section 2 (12) of the Act.

(II) As per Section 86(1)(e), there are two categories of `generators namely (1) co-generators (2) Generators of electricity through renewable sources of energy. It is clear from this Section that both these categories must be promoted by the State Commission by directing the distribution licensees to purchase electricity from both of these categories.

(III) The fastening of the obligation on the co-generator to procure electricity from renewable energy procures would defeat the object of Section 86 (1)(e).

(IV) The clear meaning of the words contained in Section 86(1)(e) is that both are different and both are required to be promoted and as such the fastening of liability on one in preference to the other is totally contrary to the legislative interest.

(V) Under the scheme of the Act, both renewable source of energy and cogeneration power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that cogeneration

plants, who provide many number of benefits to environment as well as to the public at large, are to be entitled to be treated at par with the other renewable energy sources.

(VI) The intention of the legislature is to clearly promote cogeneration in this industry generally irrespective of the nature of the fuel used for such cogeneration and not cogeneration or generation from renewable energy sources alone."

[Emphasis supplied]

The Rajasthan Electricity Regulatory Commission has also considered the judgment of this Tribunal, as stated supra, in cases of Emami Paper Mills Ltd; Vedanta Aluminum Ltd; Hindalco Industries Ltd.and India Glycols Ltd; and held that:

"In view of the settled legal position, Commission is of the considered view that no RPO liability shall be fastened on such generators who generate electricity through Waste Heat Recovery for their own purpose and consume it, subject to the condition that generation from Waste Heat Recovery generation plant is in excess of the total RPO required to be complied by the CPP. If generation is lesser than the requirement to the extent of shortfall general rule applies. So far as distinction tried to be made by RREC between solar and non-solar for the purpose of compliance, in the Commission's view does not merit acceptance. Once Captive Power Plant generating electricity through Waste Heat Recovery, cannot be fastened with RPO liability under Section 86 (1) (e), there is no question of

imposition of solar RPO also as the same falls in the category of Renewable Energy.”

[Emphasis supplied]

53. It is rightly pointed out by the counsel for the Appellant that, the judgment of the Hon’ble Apex Court actually covered co-generators as well has got some substance and it is highly unlikely that the Rajasthan Electricity Regulatory Commission, whose Regulations were under challenge before the Hon’ble Apex Court, would itself grant relief to the co-generators before it relying on the judgment of this Tribunal in *Century Rayon* case. Therefore, we hold that a co-generation facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003; an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision; and as long as the co-generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities.

54. In view of the facts and circumstances, as stated supra, we hold that, the Appellants herein, being co-generation plants, are not under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase obligation in the interest of justice and equity.

Hence, the issue Nos. (I) to (IV) raised for our consideration in the instant appeals, as stated supra, are answered in favour of the Appellants.

ORDER

Having regards to the factual and legal aspects of the matter, as stated supra, the instant Appeals, being Appeal Nos. 278 of 2015, 293 of 2015, 23 of 2016, 62 of 2016 and 24 of 2016 filed by the Appellants are allowed.

The Impugned Orders dated 15.09.2014 in Petition No. M.P. No. 25 of 2012 and the Order dated 16.09.2015 in R.P. No. 1 of 2014; Impugned Order dated 15.09.2014 in Petition Nos. M.P. No. 25 of 2012; Impugned Orders dated 13.11.2015 & 28.01.2016 in Petition Nos. M.P. No. 24 of 2012 & M.P. No. 36 of 2014 respectively and Impugned Order dated 13.11.2015 in Petition No. M.P. No. 12 of 2013 passed by Tamil Nadu Electricity Regulatory Commission are hereby set aside.

With these observations, these five appeals filed by the Appellants stand disposed of.

IA NO.455 OF 2015, IA NO. 476 OF 2015, IA NO. 61 OF 2016, IA NO. 155 OF 2016 & IA NO. 65 OF 2016

In view of the Appeal Nos. 278 of 2015, 293 of 2015, 23 of 2016, 62 of 2016 and 24 of 2016 on the file of the Appellant Tribunal for Electricity, New Delhi, being disposed of, the reliefs sought in IAs, being IA Nos. 455 of 2015, 476 of 2015, 61 of 2016, 155 of 2016 & 65 of 2016, do not survive for consideration.

Parties to bear their own costs.

PRONOUNCED IN THE OPEN COURT ON THIS 2ND DAY OF JANUARY, 2019.

(S.D. Dubey) **Technical Member**	**(Justice N.K. Patil)** **Judicial Member**

√ **REPORTABLE**

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