

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

**Appeal Nos. 63, 66 & 144 of 2012**

**Dated: 29<sup>th</sup> April ,2013**

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

**Appeal No. 63 of 2012 &  
IA Nos. 126 & 127 of 2012**

**In the matter of:**

**Chhattisgarh Biomass Energy Developers Association,**  
C-33, 3<sup>rd</sup> Floor, Ashoka Millennium,  
Ring Road No. 1,  
Rajendranagar Chowk,  
Raipur-492 001  
Chhattisgarh

... **Appellant**

Versus

1. **Chhattisgarh State Electricity Regulatory Commission,**  
Through its Secretary,  
Irrigation Colony, Shanti Nagar,  
Raipur-492 001.
2. **Chhattisgarh State Power Distribution Co. Ltd.,**  
Danganiya, Raipur-492013,
3. **Jindal Steel & Power Ltd.,**  
P.B. No. 16, Kharsia Road,  
Raipur-496 110, Chhattisgarh
4. **Bhilai Steel Plant**  
Through its AGM (TEED)  
BSP, Bhilai-490001  
Chhattisgarh

...**Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen,  
Ms. Surbhi Sharma,  
Mr. Anurag Sharma  
Mr. Hemant Singh

Counsel for the Respondent(s) : Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan,  
Ms. Swapna Seshdri for CSERC

Ms. Suparna Srivastava,  
Mr. Arun Bhatnagar for CSPDCL

**Appeal No. 66 of 2012**

**In the matter of:**

**Chhattisgarh State Power Distribution Co. Ltd.,**

Vidyut Seva Bhavan,

Danganiya, Raipur-492013, Chhattisgarh

Represented by its Additional Chief Engineer

... **Appellant**

Versus

1. **Chhattisgarh Biomass Energy Developers Association,**  
C-33, 3<sup>rd</sup> Floor, Ashoka Millennium,  
Ring Road No. 1,  
Rajendranagar Chowk,  
Raipur-492 001  
Chhattisgarh
2. **Sudha Agro Oil & Chemical Industries Limited,**  
C-33, 3<sup>rd</sup> Floor, Ashoka Millennium,  
Ring Road No. 1,  
Rajendranagar Chowk,  
Raipur-492 001  
Chhattisgarh
3. **Neeraj Power (P) Limited,**  
C-33, 3<sup>rd</sup> Floor, Ashoka Millennium,  
Ring Road No. 1,  
Rajendranagar Chowk,  
Raipur-492 001  
Chhattisgarh
4. **Shivalik Power & Steel (P) Limited,**  
C-33, 3<sup>rd</sup> Floor, Ashoka Millennium,  
Ring Road No. 1,  
Rajendranagar Chowk,  
Raipur-492 001  
Chhattisgarh
5. **Chhattisgarh State Electricity Regulatory Commission,**  
Through its Secretary,  
Irrigation Colony, Shanti Nagar,  
Raipur-492 001.

6. **Jindal Steel & Power Ltd.,**  
P.B. No. 16, Kbarsia Road,  
Raipur-496 110, Chhattisgarh

7. **Bhilai Steel Plant, Bhilai,**  
AGM (TEED), Bhilai Steel Plant,  
Bhillai-490001

**...Respondent(s)**

Counsel for the Appellant(s) : Ms. Suparna Srivastava,  
Mr. Arun Bhatnagar

Counsel for the Respondent(s) : Mr. Sanjay Sen,  
Ms. Surbhi Sharma,  
Mr. Anurag Sharma for R-1

Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan,  
Ms. Swapna Seshdri for R-2

**Appeal No. 144 of 2012**

**In the matter of:**

**Chhattisgarh State Power Distribution Co. Ltd.,**

Vidyut Seva Bhavan,  
Danganiya, Raipur-492013.  
Through its Additional Chief Engineer

**.... Appellant**

Versus

1. **Chhattisgarh State Electricity Regulatory Commission,**  
Through its Secretary,  
Irrigation Colony, Shanti Nagar,  
Raipur-492 001.

2. **Chhattisgarh Biomass Energy Developers Association,**  
C-33, 3<sup>rd</sup> Floor, Ashoka Millennium,  
Ring Road No. 1,  
Rajendranagar Chowk,  
Raipur-492 001  
Chhattisgarh

3. **Jindal Steel & Power Ltd.,**  
Raipur-496 001, Chhattisgarh

4. **Bhilai Steel Plant**  
Bhillai-490001  
Chhattisgarh

**...Respondent(s)**

Counsel for the Appellant(s) : Ms. Suparna Srivastava,  
Mr. Arun Bhatnagar

Counsel for the Respondent(s) : Mr. Sanjay Sen,  
Ms. Surbhi Sharma,  
Mr. Anurag Sharma for R-2

Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan,  
Ms. Swapna Seshdri for R-1

## **JUDGMENT**

### **HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

Appeal no. 63 of 2012 has been filed by Chhattisgarh Biomass Energy Developers Association ("Developers' Association") against the order dated 28.12.2011 passed by Chhattisgarh State Electricity Regulatory Commission ("State Commission") on a petition filed by the Appellant for revision and determination of tariff for purchase of power from

biomass based renewable energy projects by the distribution licensee.

2. Appeal no. 66 of 2012 is a cross Appeal filed by Chhattisgarh State Power Distribution Co. Ltd. against the same order dated 28.12.2011.
3. Appeal no. 144 of 2012 has also been filed by Chhattisgarh State Power Distribution Co. Ltd. against the order dated 28.5.2012 passed by the State Commission in a suo motu proceeding whereby the State Commission has approved and adopted the energy charges for the FY 2012-13, as approved by the Central Electricity Regulatory Commission (“Central Commission”), for purchase of electricity from biomass energy projects by the distribution licensee.

4. The Appellant in Appeal no. 63 of 2012 is the Association representing the biomass energy generators in the State of Chhattisgarh. The Appellant in Appeal nos. 66 of 2012 and 144 of 2012 is the distribution licensee.

5. The brief facts of the case are as under:

5.1 The State Commission by order dated 11.11.2005 determined the tariff of biomass generators for supply of power to the distribution licensee. The said tariff was operative for 10 years till 2014-15 and could be reviewed after 5 years on request. The Developers' Association filed Appeal no. 20 of 2006 before the Tribunal seeking modification in the tariff determined by the State Commission. The Tribunal by judgment dated 7.9.2006 partially set aside the order of the State Commission and remanded the matter back to the

State Commission for fresh determination on the issues not confirmed by the Tribunal. The Tribunal also directed the State Commission to notify the Tariff Regulations in respect of non-conventional sources of energy in compliance with Section 61 of the Act.

5.2 The Distribution Licensee preferred an appeal before the Hon'ble Supreme Court against the judgment dated 7.9.2006 of the Tribunal. The Hon'ble Supreme Court by order dated 15.1.2007 decided the Appeal directing the State Commission to re-determine the tariff. In compliance of the order dated 7.9.2006 of the Tribunal and the order dated 15.1.2007 of the Hon'ble Supreme Court, the State Commission by order dated 15.1.2008 redetermined the tariff. Since the norms for determination of tariff based

on the operational norms as recommended by a committee appointed by the Central Electricity Authority had been taken into consideration by the Tribunal while sending the matter to remand, the State Commission decided to be guided by the said norms while re-determining the tariff.

5.3 The Distribution Licensee filed Appeal before the Tribunal against the Tariff order dated 15.1.2008 in Appeal no. 61 of 2008. The Tribunal by its judgment dated 6.11.2009 disposed of the said Appeal adjudicating on the various tariff related issues.

5.4 On 22.5.2008, the State Commission framed the Regulations for determination of tariff in respect of non-conventional sources of energy but it was specifically mentioned that these Regulations

would not be applicable to cases where Power Purchase Agreement ("PPAs") had already been entered into between the generating company and the Electricity Board prior to the date of notification of the Regulations, and tariff for such plants would be as per the provisions of the PPAs and in terms of the Commission's order dated 15.1.2008 in case of biomass based plants.

- 5.5 On 28.4.2009, the Developers' Association filed a petition being no. 25 of 2009 before the State Commission for revision of fixed charges and energy charges w.e.f. 1.4.2009. However, during the course of the proceedings the claim for the revision of fixed charges was not pressed.

- 5.6 On 16.9.2009, the Central Commission notified the Tariff Regulations for Renewable Energy Projects w.e.f. 1.4.2009.
- 5.7 On 15.4.2010 the State Commission passed the final order in Petition no. 25 of 2009 revising only the energy charges applicable to all biomass based generating plants in the State. In its order, the State Commission relied upon the biomass price fixed under the 2009 Tariff Regulations framed by the Central Commission.
- 5.8 The Distribution Licensee challenged the retrospective application of energy charges by the State Commission's order dated 15.4.2010 in the Tribunal in Appeal no. 164 of 2010. The Tribunal vide its order dated 8.2.2011 dismissed the said Appeal.

- 5.9 The Developers' Association filed a petition no. 22 of 2011 before the State Commission on 30.12.2010 for revision of tariff from FY 2010-11.
- 5.10 The State Commission passed the impugned order dated 28.12.2011 in petition no. 22 of 2011 which has been made effective from April, 2011. This order has been challenged by both, the Developers' Association and the Distribution Licensee in Appeal no. 63 of 2012 and 66 of 2012 respectively.
- 5.11 The State Commission initiated a suo motu proceeding for determination of energy charges for biomass power plants. By order dated 28.5.2012, the State Commission adopted the energy charges as determined by the Central Commission for

biomass projects through its Tariff Regulations for the FY 2012-13.

5.12 Aggrieved by the order dated 28.5.2012 of the State Commission, the distribution licensee has filed Appeal no. 144 of 2012.

6. The Developers' Association in Appeal no. 63 of 2012 have made the following submissions:

6.1 **Interest rate on debt:** The interest amount taken into consideration during 2005 has undergone changes due to market conditions, including change in fiscal policy of the Government of India and RBI. The global financial crisis further resulted in rise in interest rates. In recent times interest rates have increased to arrest inflation. Further, the interest rate taken for tariff determination is only

simple interest, whereas the interest payable to the banks and financial institutions is compounded. The Biomass plants have taken loans from various banks and financial institutions on floating interest rate. Therefore, the interest rates having gone up substantially, has caused financial loss and prejudice to the biomass plants. In the order dated 11.11.2005 the Benchmark Prime Lending Rate was considered as 10.75% p.a. and the interest rate for term loans was considered at 1% above the Benchmark PLR and the interest rate for working capital loans was considered at 2% above the Benchmark PLR. The Appellant has pleaded for revision of interest on term loan to 13.25% as per the Central Commission's Regulations.

6.2 **Annual escalation in O&M expenses:** In the order dated 11.11.2005 as modified by the order dated 15.1.2008, the escalation of O&M expenses was provided only for a period of three years and the escalation was required to be reviewed after three years. Since the biomass plants have become old, they are subjected to more maintenance and repairs. Further the plants which are of small sizes, incur more O&M expenses. Therefore, the Appellant prayed for escalation of O&M expenses at 5.72% per annum in line with the Central Commission's Regulations and revising of O&M expenses from 2010-11. However, the same was incorrectly rejected by the State Commission.

6.3 **Return on Equity for FY 2010-11:** Even though the increase in Return on Equity to 19.36% was

allowed for FY 2011-12, the same was rejected for FY 2010-11. The State Commission should have enhanced the ROE for FY 2010-11 also to meet its obligation to promote generation of electricity from renewable sources of energy under Section 86(1)(e) of the Electricity Act, 2003 .

6.4 **Line losses upto point of injection:** The energy sent out by the Biomass plants is metered at the metering point located at the distribution licensee's sub-station. The line losses in the line section from the sub-station of the generating station to the licensee's sub-station which are as much as 4% are borne by the power plant. The biomass should be paid for energy sent out at the bus bar of the power plant and the line losses should be to the distribution licensee's account.

The State Commission has incorrectly rejected the plea of the Appellant.

6.5 **Cost of bio-fuel:** The Appellant pleaded that the weighted average landed cost of fuel i.e. rice husk and 'F' grade coal in the ratio of 75:25, comes to around Rs. 2300 per MT for FY 2010-11 and submitted that 5% escalation was not sufficient to adjust the increase in fuel cost. Therefore, fuel price of Rs. 2400/MT with suitable escalation/fuel cost Adjustment for subsequent period needs to be considered. The rising demand of rice husk among the cement manufacturers is one of the factors for the rise in price of rice husk. The State Commission without considering the market conditions, rejected the request of the Appellant.

6.6 **Gross calorific value of fuel:** The average calorific value of fuel mix achievable is not more than 3105 kCal/kg. considering calorific value of 3040 kCal/kg. for rice husk and 3300 kCal/kg. for coal. The State Commission has set the GCV of Biomass at 3467 kCal/kg. vide its order dated 15.4.2010 based on Central Commission's Regulations. In Chhattisgarh only rice husk is available as biomass fuel. The State Commission should have considered the GCV of biomass fuel as 3105 kCal/kg.

7. The distribution licensee, the Appellant, in Appeal nos. 66 of 2012 and 144 of 2012 has raised the following issues:

7.1 **Framing of Regulations for determination of tariff:** The tariff determination has been

undertaken without any applicable regulations governing the generation and supply of power by biomass power plants and therefore, the entire tariff determination exercise is in violation of Section 61 of the Electricity Act, 2003. The Tribunal in its judgment dated 7.9.2006 in Appeal no. 20 of 2006 had also directed the State Commission to frame Tariff Regulations for Non-conventional Energy Sources in compliance to Section 61 of the Act. Consequently, the State Commission framed the Regulations by notification dated 22.5.2008 but the same are applicable only to those biomass plants that have been set up after coming into force of the Regulations. Therefore, an adhoc approach continues to prevail where alternatives of CEA prescribed norms, Central Commission's

Regulations and the previous tariff orders passed by the State Commission are available to the Project Developers to be chosen to claim the tariff more beneficial to them.

**7.2 Adoption of norms prescribed by the Central**

**Commission:** Adoption of the norms prescribed by the Central Commission for determination of tariff of the biomass plants is not justified when the Tariff Regulations have been framed by the State Commission. The adoption of the Central Commission's norms for determination of energy charges in the impugned order dated 28.12.2011 for FY 2011-12 is wrong. In the impugned order dated 28.5.2012 also the State Commission has wrongly approved and adopted the Central Commission's notified energy charges for FY 2012-13.

7.3 **True up of tariff of biomass plants:** The Biomass plants are not being subjected to the mandatory exercise of truing up of tariff determined earlier for them and thus being allowed to recover tariff on the basis of estimates only, which is not in consonance with the principles of tariff determination laid down in the 2003 Act.

8. The State Commission has also filed written submissions in support of its impugned orders which we shall discuss at appropriate places in this order.

9. On the above issues, we have heard Mr. Sanjay Sen, Learned Senior Counsel for the Developers' Association, Mrs. Suparna Srivastava, Learned counsel for the distribution licensee and

Shri Anand Ganesan, Learned counsel for the  
State Commission.

10. After taking into account the rival contentions of the parties, the following questions would arise for our consideration:
- i) Whether the State Commission could decide the tariff of biomass based plants without framing the Tariff Regulations?
  - ii) Whether the State Commission was correct in adopting the norms based on Central Commission's Regulations instead of relying on its own Regulations for determining the energy charges for biomass based projects?
  - iii) Whether the State Commission was correct in not permitting the true up of accounts of the Biomass Plants?

- iv) Whether the State Commission has erred in not revising the rate of interest on debt considering the prevailing Benchmark Prime Lending Rate of the Bank?
- v) Whether the State Commission was right in not revising the O&M expenses for FY 2010-11 in line with the prevailing Regulations of the Central Commission?
- vi) Whether the State Commission should have revised the Return on Equity for FY 2010-11 in line with the Central Commission's Regulations?
- vii) Was the State Commission correct in not considering the line losses on the line connecting the power plant to the licensee's sub-station in the tariff?

viii) Whether the State Commission was correct in not allowing the price of fuel claimed by the Developers' Association and not deciding the Fuel Price Adjustment Mechanism?

ix) Whether the State Commission has determined the Gross Calorific Value of biomass fuel correctly?

11. The first issue is whether the State Commission could determined the tariff without framing the Tariff Regulations.

11.1 According to the Distribution licensee, the entire tariff determination exercise is in violation of Section 61 of the Electricity Act.

11.2 Learned counsel for the State Commission has pointed out the findings of the State Commission in the impugned order and placed the following

judgments of the Hon'ble Supreme Court to establish that framing of Regulations is not a precondition to determination of tariff:

- i) (2010) 4 SCC 603 in the matter of PTC India Ltd. Vs. CERC & Ors.
- ii) (1985) 2 SCC 16 in the matter of UP State Electricity Board, Lucknow Vs. City Board, Mussorie.
- iii) AIR 1986 SC 2166 in the matter of Surinder Singh vs. Central Govt. & Others.
- iv) AIR 1961 SC 276 in the matter of T. Cajee vs. U. Jormanik Siem.

11.3 Let us first examine the impugned order dated 28.12.2011.

***“11.2 Regulations for biomass based generators:***

*The CSPDCL has stated that there are no Regulations available for determination of tariff for biomass based power generating plants and such projects are covered by Order dated November 11, 2005 and January 15, 2008. According to CSPDCL, the CBEDA members are not covered under any Regulations as a result CBEDA is free to choose cherries from all available frames and there is flexibility for the Commission also to accept the same.*

**Commission's view:** *We would like to refer to order dated Sept 2006 passed by Hon'ble Tribunal. The para 12 says:*

*"Keeping in view the principle that the generation of electricity from renewable sources of energy needs to be promoted, we accept these operational norms as recommended by the CEA's report as basic norms and the Appropriate Commission to act upon them subject to minor adjustments relating to the local site conditions and further refinement after operational data of 5 years operation of biomass plants in the state aggregating to 100 MW is available."*

*"As per the orders of the Hon'ble ATE, the scope for review of tariff was prescribed in order dated January 15, 2008 passed by the Commission. It can be seen from the order dated January 15, 2008 that almost all the parameters considered for determination of tariff were as per the orders and directions of Hon'able Tribunal. In the order dated April 15, 2010, the energy charges were*

*considered at the rates specified by Central Commission which is governed through the Regulations. In this order, we have revised only the O&M expenses, interest on working capital and ROE, the reason for which is elaborated in para 10.1. The reason for review of energy charges is also explained in para 10.2. So although there are no specific Regulations for existing biomass generators, but still the parameters considered for computation of tariff are as per directions of Hon'able ATE and the relevant Regulations specified by Central Commission or CSERC, Regulations 2008. However, we agree that there must be Regulations for determination of tariff for all biomass based power generating plants. Accordingly, suitable provisions will be incorporated in the ensuing CSERC RE Tariff Regulations, 2012.*

*As per the directions of Hon'able Tribunal, the distribution licensees (CSDPCL, JSPL and BSP) or any biomass-based power generating plant will be entitled to apply for fixing of tariff for a specific biomass generating station in case they feel that the impugned tariff is more / less than what can legitimately be determined under the Act and the Regulations. The project specific tariff for biomass based power generating plant may be determined in accordance with norms and parameters likely to be specified in the CSERC RE tariff Regulations, 2012.”*

11.4 The State Commission's findings in the impugned order dated 28.12.2011 are summarized as under:

- i) In the order dated 15.1.2008 almost all parameters considered in tariff determination were as per the directions of the Tribunal in judgment dated 7.9.2006. The provision for review of tariff after 5 years was also as per the directions of the Tribunal.
- ii) In this order the State Commission has revised only O&M expenses, interest on working capital and Return on Equity and energy charges for the reasons elaborated in the order. Although there are no specific Regulations for existing biomass generators, but the parameters are being considered as per the directions of the Tribunal, and the relevant Regulations specified by the Central

Commission or the State Commission's Regulations, 2008.

- iii) There should be Regulations for determination of tariff for all biomass based generating plants and accordingly, suitable provision will be incorporated in the ensuing Renewable Energy Regulations, 2012.

11.5 We also notice that the State Commission in compliance to the directions of the Tribunal, also notified Tariff Regulations, 2008 for Biomass based generating stations and other non-conventional sources of energy on 22.5.2008. Though these Regulations provide for normative values for some parameters viz. target capacity utilization, fuel ratio, auxiliary consumption, etc., for other parameters like capital cost, Gross Calorific Value and price of fuel, rate of interest

on debt, etc., the values have to be decided by the State Commission while determining the tariff. However, these Regulations are not applicable to cases where Power Purchase Agreements have already been entered into by the generating company with the distribution licensee prior to the date of the notification of the Regulations.

11.6 We find that the State Commission in the impugned order has revised the tariff of the power plants which had entered into the PPA with the distribution licensee prior to 22.5.2008, in accordance with its earlier order dated 15.1.2008. While revising the tariff, the State Commission has considered the directions of the Tribunal, the Central Commission's Regulations and its own Regulations. The distribution licensee has not pointed out any infirmity in the tariff

determination process or any norm/parameter decided by the Commission, except that the State Commission could not have determined the tariff without framing of the Regulations.

11.7 Section 62 of the Electricity Act, 2003 empowers the State Commission to determine the tariff. Section 61 is an enabling provision for framing of the Regulations. The framing of the Regulations under Section 61 is not a pre-condition for determination of tariff under Section 62. However, once the Regulations are framed, the tariff has to be determined in the manner specified in the Regulations and in no other manner.

11.8 Hon'ble Supreme Court in the matter of PTC India Ltd. Vs. CERC & Ors. (2010) 4 SCC 603 held as under:

*“38. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of Tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes “Tariff” as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/ fixation of tariff is done by the Appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the Appropriate Commission has to fix the tariff. This basic scheme equally applies to subject-matter “trading margin” in a different statutory context as will be demonstrated by discussion hereinbelow. In the case of M/s Narinder Chand Hem Raj and Ors. v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Ors. reported in (1971) 2 SCC 747, this Court has held that power to tax is a legislative power which can be exercised by the legislature directly or subject to certain conditions. The legislature can delegate that power to some other Authority. But the exercise of that power, whether by the legislature or by the delegate will be an exercise of legislative power. The fact that the power can be delegated will not make it an administrative power or adjudicatory power. In the said judgment, it has been further held that no court can direct a subordinate legislative body or the legislature to enact a law or to modify the existing law and if Courts cannot so direct, much*

*less the Tribunal, unless power to annul or modify is expressly given to it. In the case of Indian Express Newspapers (Bombay) Pvt. Ltd. and Ors. v. Union of India and Ors. reported in (1985) 1 SCC 641, this Court held that subordinate legislation is outside the purview of administrative action, i.e., on the grounds of violation of rules of natural justice or that it has not taken into account relevant circumstances or that it is not reasonable. However, a distinction must be made between delegation of legislative function and investment of discretion to exercise a particular discretionary power by a statute. In the latter case, the impugned exercise of discretion may be considered on all grounds on which administrative action may be questioned such as non-application of mind, taking irrelevant matters into consideration etc. The subordinate legislation is, however, beyond the reach of administrative law. Thus, delegated legislation - otherwise known as secondary, subordinate or administrative legislation - is enacted by the administrative branch of the government, usually under the powers conferred upon it by the primary legislation. Delegated legislation takes a number of forms and a number of terms - rules, regulations, by-laws etc; however, instead of the said labels what is of significance is the provisions in the primary legislation which, in the first place, confer the power to enact administrative legislation. Such provisions are also called as "enabling provisions". They demarcate the extent of the administrator's legislative power, the decision-making power and the policy making power. However, any legislation enacted outside*

*the terms of the enabling provision will be vulnerable to judicial review and ultra vires.”*

11.9 Hon’ble Supreme Court in AIR 1985 SC 883 in the matter of UP State Electricity Board Vs. City Board, Mussoorie held as under:

*“Section 46(1) of the ES Act does not say that no grid tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more.”*

11.10 In Surinder Singh Vs. Central Government & Ors.

– AIR 1986 SC 2166, the Hon’ble Supreme Court held that:

*“Para 6.....Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of Rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to*

*the exercise of the power expressly and unconditionally conferred by the statute. The expression “subject to the Rules” only means, in accordance with the rules, if any. If rules are framed, the powers so confirmed on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute.”*

11.11 Hon’ble Supreme Court in 1961 SCC 276 in the matter of T. Cajee vs. U. Jormanik Siem held as under:

*Para 10 - “Now para. 2(4) provides that the administration of an autonomous district shall vest in the District Council and this in our opinion is comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district. It is true that where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law; but where executive power is concerned only with the personnel of the administration it is not necessary even, though it may be desirable that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council. The Sixth Schedule vested the administration of the autonomous*

*districts in the Governor during the transitional period and thereafter in the District Council. The administration could only be carried on by officers like the Siem or Chief and others below him, and it seems to us quite clear, if the administration was to be carried on, as it must, that the Governor in the first instance and the District Councils after they came into existence, would have power by virtue of the administration being vested in them to appoint officers and others to carry on the administration. Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under para. 19(1)(b) or till the District Council passed laws under para. 3(1)(g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under para. 19(1)(b) or laws are passed under para. 3(1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities*

concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule.”

11.12 In view of the above findings of the Hon’ble Supreme Court, the order of the State Commission in determining the tariff of biomass based generators for supply to the distribution licensee, without any specific Regulations for such biomass generators is perfectly legal.

11.13 In view of above, we do not find any merit in the contention of the Distribution Licensee and accordingly we reject the same.

12. The second issue is regarding adoption of norms as per the Central Commission’s Regulations instead of its own Regulations.

12.1 According to the distribution licensee, while determining the energy charges for FY 2011-12 in the impugned order dated 28.12.2011, the State Commission had adopted the energy charges as determined by the Central Commission for that year. Upon issuance of 2012 Regulations by the Central Commission on 27.3.2012, notifying the terms and conditions for tariff determination for renewable energy sources for the subsequent years, the State Commission has passed the order dated 28.5.2012 impugned in Appeal no. 144 of 2012 whereby the State Commission has approved and adopted the Central Commission's notified energy charges for FY 2012-13. The State Commission could not have relied on Central Commission's Regulations.

12.2 We find that the Tariff Regulations, 2008 of the State Commission do not provide for any specific normative value for Gross Station Heat Rate, Gross Calorific Value and cost of fuel which are required for determination of the variable charges. The relevant extracts of the Tariff Regulations, 2008 are as under:-

*“5.2 Normative Values:*

*(i) .....*

*(ii) .....*

*(iii) .....*

*(iv) **Gross Station Heat Rate (GSHR):** The gross station heat rate for biomass based generating stations shall be based on the actual PG test report of generating plant and / or the design heat rate of the generating plant. An allowance of 5% over the gross heat rate shall be given to cover the operational uncertainties. To take care of various losses, an allowance of 5% of over the gross heat rate derived as above shall also be provided.*

*(v) **Gross Calorific Value (GCV):** Average GCV for fuel including coal / fossil fuel shall be as per the quality of fuel.*

(vi) **Cost of Fuel:** *The cost of biomass and coal will be considered by the Commission on the basis of prevailing market rate.”*

12.3 We find that the State Commission in its order dated 15.4.2010 adopted the base price of biomass fuel for FY 2009-10 same as specified in the Central Commission’s Regulations i.e. Rs. 1797 per MT. The State Commission decided the price of biomass fuel for FY 2011-12 taking the base price of Rs. 1797 per MT as decided in its order dated 15.4.2010 with fuel cost indexation as specified by the Central Commission.

12.4 In the order dated 28.5.2012 impugned in Appeal no. 144 of 2012 also, the State Commission has adopted the variable charges as decided by the Central Commission as per its Regulations. We agree with the contention of the Distribution

Licensee that the State Commission cannot ignore its own Regulations and rely on Central Commission. However, as stated above, the State Commission's Regulations do not specify any specific value for State Heat Rate, Gross Calorific Value and price of biomass fuel. Therefore, if the State Commission has adopted the specific norms as specified by the Central Commission for determination of variable charges it would be perfectly legal.

12.5 According to Section 61(a) of the Electricity Act, the State Commission in specifying the terms and conditions for the determination of tariff is guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and

transmission licensees. Therefore, if the State Commission's Regulations do not specify any specific values for normative parameters required for determination of the variable charges, the State Commission is perfectly justified in adopting the values specified by the Central Commission.

12.6 The Distribution Licensee has not made any contention that the variable charges as decided by the State Commission are not correct or it should have been different. The only contention of the Distribution licensee is that the State Commission could not have adopted the variable charges as determined in the Central Commission's Regulations. We do not find any illegality in the State Commission adopting the variable charges as per the Central Commission's Regulations.

13. The third issue is regarding truing up of the accounts of the biomass developers.

13.1 According to Distribution licensee, truing up is an essential exercise which is required to be taken up by the State Commission so that the consumers are ultimately charged tariff based on the actual expenses incurred against the assumed expenditure.

13.2 According to the State Commission, there cannot be any question of truing up of tariff based on normative parameters. It is contended that the tariff of biomass based generating stations is a generic tariff based on normative parameters where truing up may be impracticable and the Tribunal has already decided this issue in the

judgment dated 8.12.2011 in Appeal nos. 86, 87, 227 of 2006 & 14 of 2009.

13.3 We find that the tariff determined by the State Commission for the biomass power plants is a generic tariff based on normative parameters. There is no provision for true up of biomass based power plants either in the Regulations of the State Commission or the Central Commission. Further, in such cases where all the parameters of the generic tariff are decided on normative basis, the true up is not required to be carried out. The generator, if it performs better than the normative parameters gains by retaining the profits of its efficiency. On the other hand if the actual performance of the generator is worse than the normative parameters, then it has to bear the loss and the same is not passed on to the consumers.

The true up may be required only if tariff is determined in a cost plus approach at the beginning of the year where the controllable and uncontrollable expenditures are estimated. After completion of the year, on the true up of accounts, the efficiency gain or loss on account of controllable items is shared between the utility and the consumers in a ratio as specified in the Tariff Regulations and the actual expenditure on uncontrollable items after prudence check is allowed to be passed on to the consumers. This is done typically for a distribution licensee where the Annual Revenue Requirement is estimated at the beginning of the year.

- 13.4 As pointed by the State Commission, this issue had already been decided by this Tribunal in its Judgment dated 8.12.2011 in Appeal nos. 86, 87,

227 of 2006 & 14 of 2009 wherein the Tribunal decided as under:

*“22. The last issue is regarding Return on Equity.*

*22.1. According to learned counsel for the GRIDCO, any profit in excess of 16% Return on Equity cannot be retained by NTPC and the Central Commission ought to have carried out truing up of the expenses incurred by the NTPC.*

*22.2. According to the learned counsel for the NTPC, the process of truing up is only relevant in case of distribution companies where the expenditure is estimated at the beginning of the year and at the end of the year the figures are trued up based on actuals. The generation tariff determined by the Central Commission is based on normative parameters. If the generating station is not able to perform upto the level of performance notified in the norms by the Regulations, it will have to bear the cost of the inefficiency and the same could not be passed on to the consumers. Similarly, if a generating station performs better than the prescribed norms, it would be entitled to keep the gains arising out of its efficiency. This issue has already been decided by this Tribunal in the matter of U.P. Power Corporation Ltd. vs. NTPC Limited & Ors. reported as 2007 APTEL 77 as indicated in*

*paragraph 20.3 above. In view of the ratio decided by the Appellate Tribunal in this judgment, we reject the contention of GRIDCO for truing up the expenses of NTPC”.*

- 13.5 The above ratio decided by the Tribunal will be applicable to the present case also where the generic tariff has been determined exclusively on normative parameters. Accordingly, this issue is decided as against the distribution licensee.
14. The fourth issue is regarding rate of interest on debt.
- 14.1 According to the Developers’ Association, the State Commission should have revised the rate of interest on debt after considering the prevailing benchmark prime lending rate of the Bank.
- 14.2 According to the State Commission, the Developers Association has only relied on the

Central Commission's Regulations but has not produced any actual data showing the rate at which the loans have been obtained by the members of the Appellant. The parity with the Central Commission's Regulations, 2012 could not be claimed by the Appellants before the Tribunal as the Central Commission's Regulations pertain to projects being set up in the 5 years starting from 1.4.2012. These are new projects which will be funded as per the loans available from 1.4.2012. However, the projects set up by the members of the Developers' Association are much older and the data submitted before the State Commission showed a wide variation in interest rates. Therefore, the State Commission maintained rate of interest on term loan at 11.75%.

14.3 According to the Distribution Licensee, no documentary evidence had been produced before the State Commission which could show that all the members of the Developers' Association had availed loan on floating rate of interest and if that was the case then only such developers who had floating rate of interest ought to have come to the Commission for their separate tariff revision and generic revision on this account was not called for.

14.4 Let us now examine the impugned order dated 28.12.2011. The relevant extracts of the impugned order dated 28.12.2011 are as under:

*“c. **Interest on loan capital:** The petitioner has submitted that interest on term loan should be revised from 11.75% to 13.25% in accordance with CERC regulations to reflect the present cost of funds. The respondent CSPDCL has objected the proposed increase in interest rate and submitted*

*that none of the CBEDA members are borrowing new loan for installation of new power plant therefore, the loans tie-up are also quite old when the interest rates were quite low and insisted for true-up of actual expenses before considering further revision on any such account. In response to this the petitioner has submitted some certificates from financial institutions like Indiabulls Infrastructure Credit Ltd, State Bank of India, Andhra banks, UCO banks and chartered accountants as documentary evidences.*

**Commission's View:** *It is observed that the interest rates are varying. Different financing institutions offer different interest rates. The biomass based power plants are under operation since different period of time. The developers may have borrowed loan from different institutions. So the loan liability for each developer may vary. It is observed that the interest rates are not on continuous increasing trend as compared to what was considered in order dated January 15, 2008. Taking these aspects into consideration the interest rate approved vide order dated January 15, 2008 has been considered”.*

- 14.5 On perusal of the impugned order it is clear that the State Commission has given a reasoned order for continuing the same interest rate for the generic tariff after examining the documents

furnished by the Developers. The Developers' Association have also not produced any supporting documents in their arguments before us to establish higher rate of interest on the loans taken by the developers. There is also no force in argument of the Appellant regarding interest payable to banks on compounded basis in view of the fact that the energy bills are raised every month which includes the component of interest on loan. Thus, this issue is decided against the Developers' Association.

15. The fifth issue is regarding O&M expenses.

15.1 The findings of the State Commission in this regard are as under:

***“Commission's View:*** *In the order dated January 15, 2008, the Commission observed that O & M expenses considered for determination are on higher side and shall be reviewed after three year. As per CERC Regulations, the normative O&M*

*expenses for the first year of the Control period (i.e. FY 2009- 10) shall be Rs. 20.25 Lakh per MW, which shall be escalated at the rate of 5.72% per annum. From point of view of reasonability, the Commission has considered the CERC specified O&M expenses and escalation factor to arrive at O&M for the biomass plants for the year 2011-12 and onwards as CERC has arrived at this cost after thorough study and vide consultation process. So for the year 2011-12, the O & M expenses have been considered as Rs. 22.63 lakh/MW (i.e. Rs. 1.7 Crore for 7.5 MW) and total escalation of 5.72% per annum for subsequent years”.*

15.2 We find that the State Commission has determined the O&M expenses as per the Regulations of the Central Commission from FY 2011-12. As per order dated 15<sup>th</sup> January, 2008, the O&M expenses had to be reviewed after three years. Therefore, we do not find any infirmity in the order of the State Commission in revising the O&M expenses only from 2011-12.

16. The sixth issue is regarding Return on Equity for FY 2010-11.

16.1 According to the Developers' Association, the higher ROE as permitted for FY 2011-12 should have been allowed for FY 2010-11 also.

16.2 We find that the State Commission has allowed Return on Equity at par with that permitted to conventional power generators. The relevant extracts of the impugned order dated 28.12.2011 are as under:

**“Commission's View:** *The plea of the petitioner that higher ROE shall be permitted due to increase in fuel cost does not appear appropriate. The ROE specified in the tariff order dated 31.03.2011 passed by the Commission for the year 2011-12, in respect of State utilities (Chhattisgarh State Power Generation Companies Ltd, Chhattisgarh State Power Transmission Commission Ltd. and Chhattisgarh Power Distribution Company Ltd.) is 19.36%. So as per existing order dated 15.01.2008, the biomass based power generating plants are permitted lesser ROE as compared to State utilities. Section 86(1)(e) mandates the State Commissions to promote renewable energy sources. Keeping this spirit into consideration the Tariff Policy prescribes that the procurement of renewable power by the*

*distribution companies shall be done at preferential tariffs determined by the Appropriate Commission. One of prime component of preferential tariff for promotion of renewable energy source is higher ROE as compared to fossil fuel based power generating plants and licensees. Taking this aspect into consideration the Commission had specified higher ROE in the order dated 15.01.2008. But now since the ROE permitted vide order dated 15.01.2008 is less than the ROE permitted to State utilities for the year 2011-12, the Commission decides that ROE of 19.98% shall be considered for biomass based power generating plants for the year 2011-12 and onwards”.*

16.3 Thus, the State Commission has allowed the ROE to Biomass plants at the same level as permitted to the State Power Generation Companies, Transmission Licensees and the Distribution Licensees i.e. 19.98% with effect from FY 2011-12. As the higher RoE has been allowed to the State Power Generation Companies, Transmission Licensees and Distribution Licensee with effect from FY 2011-12, the Biomass Plants have also been allowed the higher RoE w.e.f. 2011-12. Thus, we do

not find any infirmity in the findings of the State Commission is not allowing a higher RoE to Biomass Power Plants for FY 2010-11.

17. The seventh issue is regarding line losses from power plant to the point of injection at the licensee's sub-station.

17.1 According to the Developers' Association, the line losses in the line section from the generating station to the licensee's sub-station should be borne by the distribution licensee.

17.2 The findings of the State Commission in this regard are as under:

***“Commission's view:*** *The CERC RE Tariff Regulations 2009, the Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by plants based on nonconventional sources of energy) Regulations, 2008 and the order passed by Hon'ble Tribunal specifies auxiliary consumption of 10%.*

*Therefore, the auxiliary consumption of 10 % shall also be retained for computation of tariff. It is true that the fixed cost is determined on the basis of net generation, which is derived after deducting auxiliary consumption from gross generation. As per the provisions under section 9 & 10 of the Act a generating station can construct, operate and maintain dedicated transmission lines. Considering the provisions of existing State Grid Code which is applicable for all generators including the generators based on renewable energy in the State, presently the Commission is not inclined to accept the submission of CBEDA in isolation”.*

17.3 Thus, the State Commission has not allowed the line losses in the tariff.

17.4 We find that the State Commission’s Regulations, 2008 do not deal with the issue of line losses from the generating station to the point of injection. We find that in the Central Commission’s Regulations, the point of inter-connection for biomass power plants is the line isolator on outgoing feeder on HV side of the generator transformer i.e. the energy sent out at the bus

bars of the generating station. The auxiliary consumption considered in 2009 Regulations is 10% i.e. the same as decided by the State Commission. We find that the State Commission has not dealt with the issue of line losses properly. Just because the duties of the generating company under Section 10 of the 2003 Act includes establishment, operation and maintenance of the dedicated transmission line; the transmission loss on the dedicated transmission line could not be ignored in determination of the tariff. If the energy delivered at the sub-station of the distribution licensee is considered for payment, the line loss on the dedicated transmission line has to be included in the tariff. Alternatively, the energy sent out at the bus bars of the generator could be considered for

payment. The impugned order does not indicate if the transmission loss on the dedicated line has been included in the norm for auxiliary consumption allowed by the State Commission.

17.5 We feel that the State Commission should reconsider the issue regarding accounting for the line losses on the transmission line connecting the biomass generating station to the licensees' system. Alternatively the State Commission could consider the sent out at the bus bars of the biomass generators which are selling power to the distribution licensee into consideration for payment. Accordingly, we remand the matter to the State Commission to reconsider this issue.

18. The eighth and ninth issues are regarding price of fuel and GCV of fuel. Both these issues are

related to variable charges and are being dealt with together.

18.1 According to the Developers' Association, the State Commission has decided the fuel price as per the Central Commission's Regulations of 2009 whereas the Central Commission's Regulations do not have a separate rate for Chhattisgarh and it has clubbed all the states where a proper study was not conducted into "other states". The price decided by the State Commission does not reflect the prevailing market prices. The weighted average landed cost of fuel i.e. rice husk and 'F' grade coal in the ratio of 75:25 comes to around Rs. 2300 per MT for FY 2010-11. Therefore, upon considering 5% increase, the fuel price for the FY 2011-12 ought to have been considered as Rs. 2400 per MT. The Developers' Association have

also contended that the GCV of fuel should be taken as 3105 kCal/kg. instead of 3467 kCal/kg.

18.2 According to the Distribution licensee the State Commission could not have revised the variable charges as per the Central Commission's Regulations. The State Commission has also not decided the Fuel Price Adjustment Mechanism as per the directions of the Tribunal.

18.3 We find that the State Commission by the order dated 15.1.2008 determined the energy charges for fuel mix of 75:25 (biomass fuel: coal) from the FY 2005-06 to 2014-15 and for fuel mix of 85:15 (biomass fuel: coal) from FY 2007-08 to 2014-15 subject to the condition that the tariff will be reviewed after five years from the base year on the

request of either the bio-mass generator or the licensee.

18.4 Consequently, the Appellant filed a petition in the year 2009 seeking review of the fixed cost and energy charges. However, the Appellant did not press the claim for re-determination of fixed charges. The State Commission passed order dated 15.4.2010 re-determining the energy charges (variable charges) for the period FY 2009-10 to 2014-15. The Distribution Licensee challenged the order dated 15.4.2010 before the Tribunal. The Tribunal by order dated 8.2.2011 dismissed the Appeal.

18.5 We find that the Developers' Association in the year 2009 had approached the State Commission to revise the price for rice husk at Rs. 1797/- as

fixed by the Central Commission for “other states” which includes Chhattisgarh also for determination of energy charges for the year 2009-10. However, the Developers’ Association wanted the transportation cost to be added on the rates specified by the Central Commission and escalation of 7.5% annually.

18.6 The State Commission by order dated 15.4.2010 decided the variable charges after considering the Regulations of the Central Commission which provided for GCV of biomass fuel of 3467 kCal/kg. and base price of Rs. 1797 per MT for 2009-10 with escalation @ 5%. The State Commission by a reasoned order did not allow additional transportation cost and escalation of 7.5% as demanded by the Developers’ Association. The

order was not challenged by the Developers' Association.

18.7 Now let us examine the findings of the State Commission on this issue in the impugned order dated 28.12.2011 as under:

***“Commission's View:*** *The Commission had revised the variable charges of biomass based power generating plant in order dated April 15, 2010 passed in P No 25 of 2009. It has been observed by CERC and the some other SERC's also, that the prices quoted by the various agencies for similar kind of biomass fuel vary widely. It has been clearly stated in previous orders that adoption of a fuel cost adjustment formula would not be practicable in case when the tariff determined is generic tariff. In the order dated April 15, 2010, the Commission had considered the energy charges determined by the Central Commission in P N 284/2009 "In the matter of Determination of generic levellised generation tariff under Regulation 8 of the CERC RE Tariff Regulations 2009. The tariff was made effective from April 01, 2009 and for subsequent years an escalation of 5 % was allowed. In the order, the parameters considered for energy charges by CERC were:*

*(a) Heat rate – 3800 kcal/kWh*

*(b) GCV of biomass – 3467 kcal/kg*

*(c) Base price for 2009-10 - Rs.1797 per MT*

*The issue of line loss and auxiliary consumption has been discussed in preceding paragraphs. The reason for adoption of energy charges specified by CERC has been dealt in detail in order dated April 15, 2010. So at this point of time we do not find any justification to modify the parameters. The base price of fuel (biomass plus coal) was considered in order dated April 15, 2010 for the year 2009-10 was Rs. 1797 per MT based on the fuel (biomass plus coal) by CERC for the year 2009-10. Applying 5% escalation on this fuel price the fuel price for the year 2010-11 and 2011-12 corresponds to Rs. 1887 per MT and Rs. 1981 per MT respectively. But the CERC has specified fuel cost indexation mechanism also. This mechanism takes care of the average annual inflation rate and wholesale price index (WPI). By considering the fuel cost indexation mechanism, the CERC has considered biomass fuel price applicable for FY 2011-12 as Rs. 2017.65 per MT for other States which includes Chhattisgarh also. As per the CERC order dated 09.11.2010 passed in petition no 256/2010 (suo-motu) the energy charges determined for the year 2011-12 is 2.46 Rs/kWh. But if we consider the fuel cost and annual escalation of 5% as per the CERC's order passed in PN 284/2009, the energy charge for the year 2011-12 is 2.41 Rs/kWh. The difference of 5 paise per unit in both the above orders of CERC is due to the reason that the fuel cost derived at an annual escalation of 5% in fuel price is less than as compared to cumulative effect of annual average inflation rate and WPI. The fuel cost indexation method adopted by CERC appears to be more*

*reasonable which may take care of the interest of power developers on account of increase in fuel cost. In such context, the Commission decides that the energy charges (variable cost) determined by the CERC for year 2011-12 for other States in Petition No. 256/2010 (suomotu) dated November 09, 2010 which is Rs. 2.46 per kWh shall be made applicable for the year 2011-12”.*

18.8 We find that the State Commission in the impugned order dated 28.12.2011 has followed the same approach as followed for determination of the variable charges in the order dated 15.4.2010 i.e. following the Central Commission's order after giving proper reasons.

18.9 We notice that subsequent to the impugned order dated 28.12.2011, the Developers' Association again approached the State Commission to take note of the Central Commission's order dated 27.3.2012 and pass appropriate orders for adoption of the variable cost for the FY 2012-13

and the subsequent years. Accordingly, the State Commission adopted the Central Commission's approved variable charges for the FY 2012-13. This order has also not been challenged by the Developers' Association.

18.10 Thus, the State Commission has adopted a uniform approach for the FY 2009-10 onwards to follow the variable charges as per the Central Commission's Regulations. The Developer's Association in petitions for determination of variable charges for FY 2009-10, 2010-11 and 2012-13 have also made a request for variable charges as per the Central Commission's Regulations. Thus, we do not find any infirmity in the State Commission's order dated 28.12.2011, adopting the variable charges as per the Central Commission's Regulations/orders. In view of this

we do not find any force in the argument of the Appellant for revision in Station Heat Rate and GCV of fuel.

18.11 The Distribution Licensee has also raised the issue of Fuel Price Adjustment Formulae.

18.12 We find that the State Commission in the impugned order dated 28.12.2011 has considered the Fuel Cost Indexation Mechanism based on average annual inflation rate and wholesale price index as decided by the Central Commission. The State Commission has allowed the variable charge taking into account the annual average inflation rate and WPI. As the biomass fuel market is not regulated, the fuel price indexation could not be based on the actual price of biomass fuel and can only be escalated at inflation factor. Hence, we do

not find any infirmity in the approval of the State Commission.

19. **Summary of our findings**

- i) The order of the State Commission determining the tariff of Biomass based generators for supply to the distribution licensee without any specific Regulations for such biomass generators is perfectly legal.**
  
- ii) The State Commission's Regulations do not specify any specific value for State Heat Rate, Gross Calorific Value and price of biomass fuel. Therefore, if the State Commission has adopted the specific norms as specified by the Central Commission for**

**determination of variable charges it would  
be perfectly legal.**

- iii) True up of the accounts of the biomass  
energy generators is not required as their  
generic tariff has been determined on the  
normative parameters.**
  
- iv) There is no infirmity in the order of the  
State Commission dated 28.12.2011  
regarding interest rate.**
  
- v) There is no merit in the contention of the  
Biomass Developers regarding revising of the  
O&M expenses for FY 2010-11.**

- vi) There is no infirmity in the order of the State Commission in not allowing a higher Return on Equity for FY 2010-11.**
  
- vii) The issue regarding consideration of line losses in the tariff is remanded to the State Commission.**
  
- viii) There is no merit in the contentions of the Appellants regarding determination of variable charges according to the Central Commission's Regulations and not on the basis of higher price of fuel and GCV as claimed by the Developers' Association.**

20. Accordingly, the Appeal nos. 63 of 2012 is allowed to the extent of remanding the matter regarding line losses to the State Commission. Appeal nos. 66 & 144 of 2012 are dismissed. The State Commission is directed to pass consequential order. No order as to costs.

21. Pronounced in the open court on this  
**29<sup>th</sup> day of April, 2013.**

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

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**REPORTABLE/~~NON-REPORTABLE~~**

vs