IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 382 OF 2017

Dated: 27.01.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:

M/s Green Energy Association
Sargam, 143, Taqdir Terrace,
Near Shirodkar High School,
Dr. E. Borjes Road, Parel (E),
Mumbai- 400012

...Appellant

VERSUS

1. **Jharkhand State Electricity Regulatory Commission**
   2nd Floor, Rajendra Jawan Bhawan-cum-Sainik Bazaar,
   Mahatma Gandhi Marg (Main Road),
   Ranchi- 834001, Jharkhand

2. **M/s Tata Steel Limited**
   P.O Bistupur,
   Jamshedpur- 831001
   Jharkhand

…Respondents

Counsel for the Appellant(s) : Mr. Parinay Deep Shah
Ms. Mandakini Ghosh
Ms. Ritika Singhal
Mr. Saransh Shaw

Counsel for the Respondent(s) : Mr. Farrukh Rasheed for R- 1

Mr. Saurabh Agarwal
Ms. Aakriti Dawar
Mr. Vibhu Anshuman for R- 2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. Appeal No. 382 of 2017 has been filed by the Appellant Green Energy Association challenging the order dated 28.02.2017 in Case No. 09 of 2015 passed by the Jharkhand State Electricity Regulatory Commission (in short "JSERC" or "Commission").

Description of the Parties:

2. The Appellant, Green Energy Association, is a registered association of companies involved in renewable energy business under the REC mechanism.

3. Respondent No. 1 is the Jharkhand State Electricity Regulatory Commission, formed under Section 82 of the Electricity Act, 2003.

4. Respondent No. 2, M/s Tata Steel Limited (in short "TSL"), is the leading private integrated steel manufacturer in Jamshedpur, producing 10 MT of saleable steel annually.

Factual Matrix of the Case

5. The Respondent Commission notified the Jharkhand State Electricity Regulatory Commission (Renewable Purchase Obligation and its Compliance) Regulations, 2010 (in short “RPO Regulations”) on 31.07.2010.

6. Respondent No. 2 filed Case No. 09 of 2015 with the JSERC, requesting exemption from Renewable Purchase Obligation (RPO) for the years 2011-12, 2012-13, and 2013-14. This request was based on the assertion that its captive cogeneration exceeded the RPO requirement during those years.

7. The Appellant, an association of renewable energy developers formed under the REC mechanism, submitted an Intervention Application (I.A. No. 01 of 2016). The Respondent Commission granted permission for the intervention through an Order dated 29.07.2016.

8. The Respondent Commission, through its Impugned Order dated 28.02.2017, exempted Respondent No. 2 from fulfilling their Renewable Purchase Obligation (RPO) for the fiscal years 2011-12 to 2013-14. This decision was based on the assertion that Respondent No. 2's captive cogeneration exceeded the RPO requirement during these years. The Commission's decision to exempt Tata Steel Limited was based on a prior Order that was legally untenable.

9. Aggrieved by the Impugned Order in Case No. 09 of 2015 passed on 28.02.2017 by the Respondent Commission, the Appellant has preferred the present appeal.

Submissions of the Appellant

10. The Appellant has not filed Written Submissions, the following submissions are based on the Appeal paper book.

11. The Appellant submitted that according to Regulation 9 of the RPO Regulations, any captive consumer who fails to meet their Renewable Purchase Obligation is subject to penalties as stipulated in Regulation 10 of the JSERC Regulations.

> *"9.1 Every Captive and Open access consumer(s)/ user(s) shall have to submit necessary details regarding total consumption of electricity and purchase of energy from renewable energy sources for fulfilment of RPO on quarterly basis to the State Agency.*
> *9.2 Captive and Open access Consumer(s)/ User(s) shall purchase renewable energy as stated in Clause 5.2 of these Regulations, If the Captive user(s) and Open Access consumers) are unable to fulfil the criteria, the shortfall of the targeted quantum would attract payment of regulatory charge as per Clause 10.1 and 10.2 of these Regulations.*
> *9.3 Captive/ Open access consumer(s)/ User(s) may fulfil the RPO through the procurement of Renewable Energy Certificate as provided in Clause 6.1, 6.2 and 6.3 of these Regulations."*

12. Regulation 5 of the RPO Regulations mandates that each obligated entity must derive a specified, year-specific percentage of its total annual energy consumption from captive power plants using renewable energy sources. Regulation 5 reads as under:

> *"5.1 The minimum percentage of Renewable Purchase Obligation (RPO) as specified under Clause 5.2 of these Regulations shall be*

applicable to all Distribution Licensees in the State as well as to open access consumers and captive users within the State, subject to following conditions:

(a) Any person who owns a grid connected Captive generating plant with installed capacity of 5 MW and above (or such other capacity as may be stipulated from time to time) and consumes electricity generated from such plant for his own use; shall be subjected to minimum percentage of RPO (specified in Clause 5.2 of these Regulations) to the extent of his consumption met through such captive source;

(b) ..... Provided that the Commission may, by order, revise the capacity referred to under sub-clause (a) and sub-clause (b) above from time to time. Provided further that condition under sub-clause (a) above, shall not be applicable in case of Standby (or Emergency back-up) Captive generating plant facilities.

5.2 Every Obligated entity shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year shown as under:

Year	Minimum quantum of purchase (%) from renewable energy sources (in terms of energy in kWh)		
	Solar	Non-solar	Total
2010-11	0.25%	1.75%	2.00%
2011-12	0.50%	2.50%	3.00%
2012-13	1.00%	3.00%	4.00%

Provided that, such obligation to purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by concerned obligated entity.

Provided further that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the Distribution Licensees and consented to by the Commission shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.

5.3 The Commission may, suo-motu or at the request of a Licensee, revise the percentage targets for a year as per Clause 5.2 of these Regulations keeping in view supply constraints or other factors beyond the control of the Licensee."

13. Pursuant to Regulation 10, an obligated entity is required to contribute to a designated fund an amount calculated based on its deficiency in meeting the Renewable Purchase Obligation (RPO). Regulation 10 is as under:

"10.1 If the Obligated entity does not fulfil the renewable purchase obligation as provided in these regulations during any year and also does not purchase the Certificates, the Commission may direct, the Obligated entity to deposit into a separate fund, to be created and maintained by such Obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of renewable purchase obligation and the forbearance price decided by the Central Commission;

Provided that the fund so created shall be utilised, as may be directed by the Commission, for purchase of the Certificates;

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of Certificates to the extent of the shortfall in the fulfilment of the obligations, out of the amount in the fund;

Provided also that the Distribution Licensee shall be in breach of its license condition if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction;

10.2 Where any Obligated entity fails to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under section 142 of the Act:

Provided that in case of genuine difficulty in complying with the renewable purchase obligation because of non-availability of Certificates, the Obligated entity can approach the Commission for carry forward of compliance requirement to the next year;

Provided that where the Commission has consented to the carry forward of compliance requirement, the provision of Clause 10.1 of these Regulation or the provision of section 142 of the Act shall not be invoked."

14. It is, further, submitted by the Appellant that the Commission has passed the Impugned Order on 28.02.2017 on the grounds that the captive cogeneration during the years (FY- 2011-12, 2012-13, and 2013-14) exceeded the requirement set for RPO. However, regulation 10.2 has been ignored which clearly states that carrying forward the RPO obligation is only possible in situations where the obligated entity faces difficulty in complying with the RPO due to the non-availability of renewable energy and RECs.

15. However, Respondent No. 2, TSL, did not face any difficulty in procuring RECs since RECs have been available in the market since June 2012.

16. Further, it was submitted that the promotion of co-generation and generation from renewable sources of energy cannot be equated to Captive Power Plants/ Co-generation from conventional sources.

17. Section 86 (1) (e) of the Electricity Act, 2003 indicates that its purpose is not solely to promote standalone co-generation systems but also to encourage both co-generation and electricity generation from renewable energy sources.

Section 86(1) (e) is as follows:

> *"(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee."*

18. The terms "or" and "and" typically serve distinct functions, with "or" being disjunctive and "and" being conjunctive. Replacing "or" with "and" should only be done if absolutely necessary or if required by other sections of the statute or the clear intent of the legislature. In this context, the legislative intent is clear, and interpreting "and" as "or" would lead to an absurd outcome that contradicts the purpose of the law. The word "and" between "co-generation" and "generation" in this section is conjunctive and must be interpreted as such. This interpretation is further supported by the use of the word "sources," which qualifies both "generation" and "co-generation" of electricity. The section emphasizes "sources" rather than the technology of production. The purpose

of Section 86(1) (e) is to promote non-conventional and renewable energy sources. Therefore, the type of energy source used as input in co-generation is crucial in determining its qualification for promotion under Section 86(1) (e) of the Electricity Act, 2003.

19. The Appellant further submitted that the Commission, in its Impugned Order has referred to the judgment of APTEL in Appeal No. 53 of 2012 wherein it was observed that Section 86(1)(e) of the Electricity Act, 2003 is for promotion of renewable energy sources alone. It was further observed that the 2016 Tariff Policy explicitly states that cogeneration from non-renewable sources should not be excluded from Renewable Purchase Obligations (RPOs). However, the Commission still exempted Tata Steel Limited (TSL) from complying with its RPO requirements.

20. It was further submitted that Respondent No. 1, has given the relief to Respondent No. 2, TSL, based on the benefits given to Bokaro Steel Plant of SAIL. The Order of the Commission dated 24.03.2014 of Bokaro Steel relied on APTEL's Appeal No. 57 of 2009 (Century Rayon vs. MERC), which has already been overruled by the three-judge bench of this Tribunal in Llyod Metal and Energy Limited vs. MERC and Ors. Dated 02.12.2013 (Appeal No. 53 of 2012).

Submissions of Respondent No. 1

21. Respondent No. 1 submitted that the "Lloyd's Metal (Larger Bench)" case primarily involved a legal question referred to by a two-judge bench, which was not the same issue as the one being considered in the current case. The distinction between the cases lies in the specific legal questions and the period

involved, with the "Lloyd's Metal" decision addressing issues pertinent to a different context and time frame which is as follows:

> *The limited question referred to the Full Bench of the Tribunal is as follows:*
> *"Whether the Distribution Licensees could be fastened with the obligation to purchase a percentage of their consumption from co-generation, irrespective of the fuel used, under Section 86(1)(e) of the Electricity Act, 2003."*

22. It was held that the regulatory body (State Commission) cannot enforce a requirement for distribution companies to procure power from fossil fuel-based co-generation sources to satisfy the renewable purchase obligations set forth under Section 86(1)(e) of the Electricity Act. This section generally pertains to promoting renewable energy, and the ruling clarifies the limits of the State Commission's authority in this context.

23. The judgment established that the RPO targets do not apply to captive users of electricity generated by grid-connected fossil fuel-based cogeneration plants. Thus, the State Commission's Regulations do not require distribution companies to procure electricity from such sources to meet RPO targets.

24. The "Lloyd's Metal (Larger Bench)" decision focused on issues under the MERC Regulations of 2010, which explicitly exempted captive users of cogeneration plants from RPO requirements. Thus, the case did not concern the exemption for these users, as the regulations already addressed this matter. The primary issue in the case was separate from the exemptions provided under these regulations.

25. The Century Rayon judgment and the specific definition of cogeneration as Renewable Energy in the MERC Regulations rendered any provisions for exemption or relaxation insignificant. The inclusion of cogeneration as a form of renewable energy negated the need for separate exemptions.

26. The question of RPO exemption for the period from FY 2014-15 to FY 2018-19 is pending before this Tribunal in Appeal No. 99 of 2021 (M/s Tata Steel Limited vs. Jharkhand Renewable Energy Development Agency & Anr.), with an interim order dated 24.03.2021 currently in place. Thus, the determination of this issue's merits should await the outcome of the ongoing appeal.

27. The decision to grant the exemption to Tata Steel and other Distribution Licensees (DISCOMs) of the Respondent No. 1 Commission, was justified by the scarcity of renewable power at the time and the financial distress of the DISCOMs, which would have passed on the burden of RPO compliance to consumers. However, the Commission has since updated its RPO compliance regulations to reflect the Ministry of Power's directives and the improved availability of renewable power, thus revoking such exemptions for DISCOMs.

Submissions of Respondent No. 2

28. It is the submission of Respondent No. 2 that the order of the Commission under challenge granted SAIL's Bokaro Steel plant an exemption from RPO obligations for the fiscal years 2010-11 to 2012-13, based on the plant's use of power from cogeneration sources.

29. Respondent No. 1 granted Tata Steel the same RPO relaxation as SAIL's Bokaro Steel Plant for overlapping financial years. The decision was based on

the good faith belief, reinforced by the Century Rayon ruling, that electricity from renewable and cogeneration sources was exempt from RPO obligations. Additionally, JSERC noted a lack of response to Tata Steel's communications, prompting a fair and consistent approach to similar cases.

30. As per the principles outlined by this Tribunal in the case of Tata Power Company Limited v. Jharkhand State Electricity & Tata Steel Ltd, 2012 SCC OnLine APTEL 135, the discretionary power of relaxation should be exercised fairly and reasonably:

> *"29. The principles relating to the exercise of power of relaxation laid down in the above decisions referred to above are as follows:*
> *(a) The Regulation gives judicial discretion to the Commissions to relax norms based on the circumstances of the case. Such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation which has to be exercised only in the exceptional case where non-exercise of the discretion would cause hardship and injustice to a party.*
> *(b) If there is a power to relax the regulation, the power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some party and to disfavour some other party.*
> *(c) The party who claims relaxation of the norms shall adduce valid reasons to establish to the State Commission that it is a fit case to exercise its power to relax such Regulation. In the absence of valid reasons, the State Commission cannot relax the norms for mere asking. When the State Commission has given reasoned order as to why the power for relaxation cannot be exercised, the said order cannot be interfered with by the Appellate Forum.*

(d) The power of the Appellate Authority cannot be exercised normally for the purpose of substituting one subjective satisfaction with another without there being any specific and valid reasoning for such a substitution."

31. The impugned order covers FY 2011-14, during which Tata Steel did not procure renewable energy, as it was granted a relaxation under the 2010 JSERC Regulations. If it is later decided that this relaxation was improperly granted, Respondent No. 2 cannot retroactively comply with the renewable energy purchase requirement for that period.

32. Under Regulation 10 of the 2010 JSERC Regulations, there are provisions for depositing funds and penalties for non-compliance with RPO obligations. However, Respondent No. 2 should not be penalized for non-compliance since it was granted a lawful relaxation, similar to the exemption given to SAIL's Bokaro Steel Plant for the same time frame. Additionally, the Appellant, Green Energy Association, was established after the relevant period, on 02.04.2014.

33. The Appellant claims itself to be a generating company as per Section 2 (28) of the Electricity Act, 2003. It is the averment of the Appellant that it is a *"registered association of companies engaged in the business of renewable energy under REC mechanism".* This assertion that it is in the "business" of renewable energy is too broad and can encompass activities other than electricity generation. Under Section 2(28) of the Electricity Act, 2003, a company must own or operate a generating station to qualify as a "generating company." Simply being in the renewable energy business does not automatically meet this legal definition.

34. The list of members of the Appellant Association includes entities such as jewelers and jute companies, which likely do not operate or own generating stations. The Appellant has not clarified how it qualifies as a generating company. Even if some members own generating stations, that alone does not qualify the Association as a "generating company."

35. The Appeal's Index mentions a "Resolution," but no resolution from the Association's Governing Body has been provided. It seems that the Association's Secretary independently authorized Mr. Ashu Gupta to file the Appeal. Mr. Ashu Gupta confirmed this authorization based solely on an order from the Secretary of the Appellant, without presenting any evidence of the Secretary's authorization. Reliance to be placed on the decision of APTEL in *Green Energy Association Sangam v. Chhattisgarh State Electricity Regulatory Commission and Ors. 2019 SCC OnLine APTEL 87*:

> *"108. Learned counsel for the Respondents, further, contended that in any case, the Appellant is not an aggrieved party entitled to institute proceedings under Section 111 of the Electricity Act, 2003 as it has not suffered any legal injury except that the loss of possible financial gain for its members by selling RECs. In view of the fact that REC mechanism is a pan-India mechanism wherein the obligated entities of Chhattisgarh can purchase certificates from open market including power exchange and not necessarily from the members of the Appellant association.*
>
> *109. Having regard to the contentions of both the parties and various judgments of the Hon'ble Supreme Court of India as well as this Tribunal,* ***it is an established fact that only a person who has suffered legal injury by the act of any Commission or***

***Court is entitled to institute proceedings in the Appellate Court for redressal**.*

110. In the present case, the Appellant is primarily aggrieved that if RPO would have been enforced to the set targets, some more RECs would have been sold/purchased and would have provided some financial gain to the Appellant association members. It is relevant to note that the REC mechanism has been devised to strike a balance between the States having large potential and States having less or no renewable energy sources. Besides, the trading of RECs is done on all India basis and the obligated entities are free to sell/purchase such certificates from anywhere across the country. In an ideal case, as per the National Tariff Policy, the State Regulatory Commission are required to enforce the RPO compliance by monitoring the same on real time basis but, while deciding the matter relating to RPO, the Commission is also required to keep in mind the difficulty being faced by the licensee, impact on retail tariff, availability of RECs in the market, etc.

*111. In the light of the above, we opine that **the Appellant does not fall within the category of aggrieved person to prefer an appeal under Section 111 of the Electricity Act, 2003** for the reasons stated supra. The State Commission was fully justified and has not committed any error or illegality in dismissing the petition filed by the Appellant before it. Accordingly, we are of the considered opinion that the instant appeal filed by the Appellant/M/s Green Energy Association is not maintainable and deserves to be dismissed."*

36. The Appellant was registered as an association on 2.04.2014 and therefore has no standing in this case as the subject period in question predates its registration. Furthermore, while the Appellant did not challenge the exemption given to SAIL's Bokaro Steel Plant, it has selectively targeted the relaxation provided to Tata Steel, Respondent No. 2.

37. The recent judgment of Tata Steel Limited vs. Odisha Electricity Regulatory Commission dated 20.02.2024 in Appeal No. 337/2023 addressed the issue of RPO Obligations for captive users consuming power from Co-gen plants. The case involved the OERC Regulations 2021, which differ from the JSERC Regulations 2010. Unlike the JSERC Regulations, the OERC Regulations 2021, under Regulation 3(1), explicitly classify co-generation plants as Obligated Entities.

38. The Tata Steel judgment involved the OERC Regulations, 2021, effective from 15.02.2022. Both the OERC and this Tribunal focused on the period after this date and did not impact any exemptions or relaxations granted before it. The 2021 Regulations established RPO beginning 15.02.2022, per the new Clause 3.1(b).

39. Also, it has been held that the power to relax can be exercised by the State Commission in context of the RPO Obligations, as follows:

> *"The question whether OERC has the power to relax the rigour of the Regulations in the facts and circumstances of a particular case and, if so, whether it should exercise such power in the present case, need not be gone into present proceedings, as we see no reason to interfere with the impugned order passed by the OERC. Suffice it to make it clear that the order now passed by us shall not*

disable the Appellant, if they so choose, from approaching OERC seeking relaxation of the applicable regulations."

40. In the present case Respondent No. 1 has passed the Impugned Order exercising its power to relax.

Observations and Conclusion

41. The contentions and submissions of the Appellant, Respondent No. 1, Commission, and Respondent No. 2 have been examined in detail and the only issue that needs to be resolved is as under:

Whether the State Commission was correct in exempting Respondent No. 2 from its obligation of purchasing RECs to the extent that it had complied with its RPO obligations through its captive co-generating power plant.

42. The Appellant contended that Respondent No. 1 has improperly exempted Tata Steel Limited (TSL) from complying with its Renewable Purchase Obligation (RPO) requirements during the fiscal years 2011-12, 2012-13, and 2013-14.

43. The Appellant had argued that the Commission's order dated 28.02.2017 ignored Regulation 10.2 of RPO Regulations, which allows the carrying forward of RPO obligations only under specific circumstances, such as the non-availability of renewable energy.

44. Regulation 10.2 of RPO Regulations states that carrying forward the RPO obligation is only possible in situations where the obligated entity faces

difficulty in complying with the RPO due to the non-availability of renewable energy and RECs. However, Respondent No. 2, TSL could not have faced difficulties in procuring Renewable Energy Certificates (RECs) since they were available in the market since June 2012 but they did not purchase the same.

45. The Appellant asserted that the promotion of co-generation and generation from renewable sources should not be equated with captive power plants using conventional sources.

46. The exemption granted to Respondent No. 2, TSL, was based on previous judgments and the benefits extended to other entities like Bokaro Steel Plant for the FY 2010-11 to 2012-13. The Commission referred to the decision of this Tribunal in Century Rayon's case (Century Rayon vs. MERC, Appeal No. 57 OF 2009).

47. TSL argued that their operations were compliant with the existing regulations and that the Commission's decision was consistent with past rulings of this Tribunal.

48. The Commission's reliance on past judgments was misplaced, as the context and regulatory framework had evolved because of the availability of RECs in the market.

49. The Impugned Order provided necessary relief from the RPO compliance, allowing Respondent No. 2 to utilize their captive co-generation power plant to meet the obligations of REC purchase which ought not to have been allowed by the Commission.

50. As per the decision of this Tribunal in Llyod Metal and Energy Limited vs. MERC and Ors. dated 02.12.2013 (Appeal No. 53 of 2012) the provisions contained in Section 86(1)(e) are for promoting energy from renewable sources alone and the Tariff policy 2016 clause 6.4 (1) states that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.

51. The considered opinion of this Tribunal is that the relief granted to Respondent No. 2 by the Commission is not as per the then relevant provisions of the law as under clause 10 of JSERC RPO Regulations, 2010, TSL being a non-compliant of RPO obligations had to form a separate fund on the basis of shortfall in RPO which had not been done.

52. Respondent No. 2 had unfairly benefitted from its noncompliance with RPO obligations and the Commission erred in giving the relief to Respondent No. 2, which casts an additional burden on the consumers of the Appellant, thus directly ignoring the section 61(d) of the Electricity Act, 2003.

53. It is categorically held that the State Commission has erred in exempting Respondent No. 2 from its obligation of purchasing RECs to the extent that it had complied with its RPO obligations through its captive co-generating power plant.

54. This Tribunal in its judgment dated 20.02.2024 in *Tata Steel Ltd. vs OERC and ors.* has concluded as under:

> ***"IX.CONCLUSION:***
> *We summarize our conclusions as under:-*
> *(i) The State Commission has been conferred the power, by Section 86(1)(e) of the Electricity Act, to frame Regulations*

*specifying a minimum percentage of renewable energy to be purchased, from out of the total consumption of electricity by captive power consumers, as such Regulations promote generation of electricity from renewable sources of energy, protect the environment, and thereby prevent pollution. (**Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission, (2015) 12 SCC 611).***

*(ii) The Report of the Standing Committee on Energy (on the Electricity Bill presented to Lok Sabha on 19.12.2002) indicates the intention of the legislature, while enacting the Electricity Act, 2003, that generation from non-conventional and renewable sources should be promoted, and the Commissions may prescribe a minimum percentage of power to be purchased from such non-conventional and renewable sources. (**Lloyds Metal & Energy Ltd).***

*(iii) Electricity generated, from fossil fuel based co-generation plants, is not generation from non-conventional sources of energy or renewable sources of energy. (**Lloyds Metal & Energy Ltd).***

*(iv) Determination by the State Commission, of appropriate differential prices of electricity, can only be with respect to non-conventional sources of energy. No obligation is placed on the Distribution Licensees to purchase electricity from co-generation based on fossil fuel. (**Lloyds Metal & Energy Ltd).***

*(v) As thermal efficiency, of a co- generation plant based on fossil fuel, is higher compared to a fossil fuel based generating station of a similar size, there is also no requirement of determining appropriate differential prices, or to provide preferential tariff, for co-generation based on fossil fuel. (**Lloyds Metal & Energy Ltd).***

*(vi) The Tariff Policy clearly indicates that, under Section 86(1)(e), the Commission is required to fix the minimum percentage of total consumption of Electricity by a captive consumer for purchase of energy from non-conventional and renewable sources of energy, including co-generation also from non- conventional and renewable sources. (**Lloyds Metal & Energy Ltd).***

*(vii) "co- generation", as defined in Section 2(12) of the Electricity Act, is only a process of generation of electricity and another form of energy, and cannot be termed as a source of electricity like renewable sources of energy. (**Lloyds Metal & Energy Ltd).***

(viii) A distribution licensee 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, under Section 86(1)(e), can be fastened only

*with respect to electricity generated from renewable sources of energy. (**Lloyds Metal & Energy Ltd).***

(ix) 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.

(x) The Regulations, made in consonance with the provisions of the Electricity Act, the National Electricity Policy and the Tariff Policy, neither place any obligation on the Distribution Licensee to, nor has preferential tariff been determined, for purchase of electricity from fossil fuel based co-generation.

*(xi) In the two-member bench judgement of this Tribunal in **Century Rayon Ltd vs Maharashtra Electricity Regulatory Commission (**Order in Appeal No. 57 of 2009 dated 26.04.2010), and the judgements which followed it, it has been held that entities, owning and operating a co-generation based CPP irrespective of the fuel used, cannot be fastened with renewable purchase obligations as long as the electricity generated from its co-generation plant is in excess of the presumptive RPO target (qua its captive consumption) for the relevant years.*

*(xii) These judgements run contrary to and fall foul of the Full Bench judgement (of three members) of this Tribunal in **Lloyds Metal & Energy Ltd.** Consequently, it is the judgement of the Full Bench of this Tribunal in **Lloyds Metal & Energy Ltd.** which is binding, and not the law declared in **Century Rayon Ltd (**Order in Appeal No. 57 of 2009 dated 26.04.2010), and the judgements of the two member benches of this Tribunal which followed it.*

(xiii) RPO obligations can, therefore, be fastened on captive power consumers. Such RPO obligations, to procure and consume power from renewable sources of energy, can neither be adjusted nor set-off against the quantum of power consumed from co-generation plants based on fossil fuel.

(xiv) As it is impermissible for any Court or Tribunal to add words into a statutory provision, the earlier judgments of two member benches of this Tribunal wherein it was held that the Commission was obligated to promote equally both "co-generation" and "generation of electricity from renewable sources of energy" would, in effect, require the word "equally" to be read into Section 86(1)(e) of the Electricity Act. As it would amount to judicial legislation, such a course is impermissible.

(xv) The 2021 RPO Regulations, made by the Respondent-Commission, are in accordance with the National Tariff Policy made

and amended by the Government of India in the exercise of its powers under Section 3 of the Electricity Act.
(xvi) As the OERC has chosen to be guided by the Tariff Policy, in making the RPO Regulations which are in the nature of subordinate legislation, its validity cannot be examined in appellate proceedings under Section 111 of the Electricity Act.
(xvii) Exercise of the power either to read down statutory regulations or to ignore them on the premise that it falls foul of, or runs contrary to, the Parent Act amounts to exercise of the power of judicial review, which power is not available to be exercised by this Tribunal."

55. This Tribunal has rendered the above conclusion after duly considering the judgments as placed before us and therefore, we find no reason to deliberate further on these judgments, the conclusion is thus applicable in this case, as under:

(i) Electricity generated, from fossil fuel-based co-generation plants, is not a generation from non-conventional sources of energy or renewable sources of energy,
(ii) "co- generation", as defined in Section 2(12) of the Electricity Act, cannot be termed as a source of electricity like renewable sources of energy,
(iii) These judgments run contrary to and fall foul of the Full Bench judgment (of three members) of this Tribunal in Lloyds Metal & Energy Ltd. Consequently, it is the judgment of the Full Bench of this Tribunal in Lloyds Metal & Energy Ltd. which is binding, and not the law declared in Century Rayon Ltd (Order in Appeal No. 57 of 2009 dated 26.04.2010), and the judgments of the two-member benches of this Tribunal which followed it,
(iv) **RPO obligations can, therefore, be fastened on captive power consumers, and**
(v) Such RPO obligations, to procure and consume power from renewable sources of energy, can neither be adjusted nor set off against the quantum of power consumed from co-generation plants based on fossil fuel.

56. The State Commission has erred in granting exemption to Respondent No. 2, such an unjustified and unreasonable decision deserves to be set

aside which is not only contrary to the law but also against the interest of the consumers.

57. We also condemn the act of Respondent No. 2, by making written submissions in addition to what has been argued before us, by raising the issue of maintainability of the Appeal through the written submission without arguing the issue in the court.

58. It is the decision of the State Commission vide Order dated 29.07.2016 that has allowed the Appellant to be an intervenor before the State Commission, after considering the Intervention Application (I.A. No. 01 of 2016) filed before it.

59. Therefore, we decline to accept the submission of Respondent No. 2 on this count.

60. We also find Respondent No. 2's contention unacceptable in its support that Respondent No. 1 granted Tata Steel the same RPO relaxation as SAIL's Bokaro Steel Plant for overlapping financial years and the decision was based on the good faith belief, reinforced by the Century Rayon ruling,

61. Any decision contrary to or bad in law has to be set aside.

62. Further, the argument of Respondent No. 2 that any direction for compliance with the relevant Regulations i.e. Regulation 10 of the 2010 JSERC Regulations, for depositing funds and penalties for non-compliance with RPO obligations, is penalizing Respondent No. 2 for non-compliance since it was granted a lawful relaxation, similar to the exemption given to SAIL's Bokaro Steel Plant for the same time frame.

63. We see no reason to accept such an argument which is bad in law.

ORDER

For the reasons stated above, we are of the view that the captioned Appeal No. 382 of 2017 has merit and is allowed.

The Impugned Order dated 28.02.2017 in Case No. 09 of 2015 passed by the Jharkhand State Electricity Regulatory Commission is set aside.

The State Commission is directed to determine the amount for the relevant period of non-compliance in terms of Regulation 10 of the RPO Regulations within one month of this judgment and Respondent No. 2 shall deposit the same within one month thereafter before the State Commission to be utilized for the purchase of the RECs on behalf of the Respondent No. 2 and the same shall be in addition to the RECs as required to be purchased by him.

The Captioned Appeal and pending IAs, if any, are disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 27th DAY OF JANUARY, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj