IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.397 OF 2019
APPEAL No.441 OF 2019

Dated: 15.09.2025

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

In the matter of:

APPEAL No. 397 of 2019

1. BSES Yamuna Power Limited
A Public Limited company incorporated
Under the provisions of the Companies
Act, 1956, having its Registered Office
At Shakti Kiran Building, Karkardooma,
New Delhi – 110 032
Through its Authorised Signatory

2. BSES Rajdhani Power Limited
A Public Limited Company incorporated
Under the provisions of the Companies
Act, 1956 having its Registered Office
At BSES Bhavan, Nehru Place
New Delhi - 110 019
Through its Authorised Signatory … Appellants

Versus

1. Delhi Electricity Regulatory Commission
Viniyamak Bhawan, C-Block Shivalik,
Malviya Nagar, New Delhi – 110 017
Through its Secretary

2. M/s. Green Energy Association
Sargam, 143, Taqdir Terrace
Near Shirodkar High School
Dr. E. Borjes Road, Parel (East)
Mumbai – 400 012
Through its Secretary

3. Tata Power Delhi Distribution Ltd.
NDPL House, Hudson Lines
Kingsway Camp, Delhi – 110 009
Through its Managing Director

4. Energy Efficiency & Environment
Govt. of Delhi (EE & REM)
2nd Floor, E Wing, GPO Building
Vikas Bhawan – II, Civil Lines
New Delhi – 110 054
Through its Deputy Secretary … Respondent (s)

Counsel for the Appellant(s)	:	Buddy A. Ranganadhan, Sr. Adv. Hasan Murtaza
Counsel for the Respondent(s)	:	Dhananjay Baijal for Res. 1

APPEAL No. 441 of 2019

1. BSES Rajdhani Power Limited
A Public Limited Company incorporated
Under the provisions of the Companies
Act, 1956 having its Registered Office
At BSES Bhavan, Nehru Place
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2. BSES Yamuna Power Limited
A Public Limited company incorporated
Under the provisions of the Companies
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At Shakti Kiran Building, Karkardooma,
New Delhi – 110 032
Through its Authorised Signatory … Appellants

Versus

1. Delhi Electricity Regulatory Commission
Viniyamak Bhawan, C-Block Shivalik,
Malviya Nagar, New Delhi – 110 017
Through its Secretary

2. Indian Wind Power Association
513-514, 5th Floor, World Trade Centre
Barakhamba Lane, New Delhi – 110 001
Through its President

3. Tata Power Delhi Distribution Ltd.
NDPL House, Hudson Lines
Kingsway Camp, Delhi – 110 009
Through its Managing Director

4. New Delhi Municipal Council
Palika Kendra, Parliament Street
New Delhi – 110 001
Through its Secretary

4. Energy Efficiency & Environment
Govt. of Delhi (EE & REM)
2nd Floor, E Wing, GPO Building
Vikas Bhawan – II, Civil Lines
New Delhi – 110 054
Through its Deputy Secretary … Respondent (s)

Counsel for the Appellant(s)	:	Buddy A. Ranganadhan, Sr. Adv. Hasan Murtaza
Counsel for the Respondent(s)	:	Dhananjay Baijal for Res. 1

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. These two appeals are directed against the common order dated 18.09.2019 passed by 1st respondent Delhi Electricity Regulatory Commission (hereinafter referred to as "the Commission") passed in petition nos.19/2014 and 80/2015 thereby holding the appellants liable for payment of penalty under Section 142 of Electricity Act, 2003 for failure to meet Renewable Purchase Obligation (RPO) as mandated in Regulation 11 of Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 (hereinafter referred to as RPO Regulations, 2012). The penalty imposed upon the appellants in the impugned order is as under: -

> *"B. **<u>BRPL and BYPL:</u>** No compliance of RPO has been reported by BRPL or BYPL and they are in continuous default of meeting the RPO and accordingly penalty separately payable by BRPL and BYPL shall be as under:*
>
> ***FY 2012-13:*** *Rs.1,13,60,000/- for failure to meet RPO after 1st July, 2013 till 20th September, 2019 as continuing default for 2272 days at a rate of Rs.5,000/- per day. The*

penalty at a rate of Rs. 5,000/- per day shall be payable for further continuing default after 5th August, 2019 till the Discom meets the RPO.

FY 2013-14: *Rs1,00,000/- for failure to meet RPO and Rs.95,35,000/- after 1st July, 2014 till 20th September, 2019 as continuing default for 1907 days at a rate of Rs.5,000/- per day. The penalty at a rate of Rs. 5,000/- per day shall be payable for further continuing default after 5th August, 2019 till the Discom meets the RPO.*

FY 2014-15: *Rs1,00,000/- for failure to meet RPO with Rs.77,10,000/- after 1st July, 2015 till 20th September, 2019 as continuing default for 1542 days at a rate of Rs.5,000/- per day. The penalty at a rate of Rs. 5,000/- per day shall be payable for further continuing default after 5th August, 2019 till the Discom meets the RPO."*

2. It is argued on behalf of the appellants that failure on their part to meet RPO during these Financial Years (FYs) 2012-13, 2013-14 and 2014-15 was not deliberate and was a result of precarious financial constraints faced by them on account of inadequacy of tariff, which has been acknowledged by this Tribunal in judgment dated 21.07.2015 in appeal nos.69-72 of 2018. The learned senior counsel appearing for the appellants would submit that when the tariff was inadequate, there arose no question of any punitive action against the appellants for non-compliance of RPO. He also pointed out that the appellants are in surplus and have overachieved their RPO targets from FY 2023-24 and accordingly, this Tribunal in the said judgment dated 21.07.2025 in appeal nos.69-72 of 2018 has directed the same to be adjusted against the FYs 2012-13 to 2014-15.

3. Even though the appellants have assailed the said impugned order of the Commission on various other grounds also, the learned senior counsel confined his submissions to what we have noted hereinabove with the request for permission to keep those grounds open to be agitated as and when need arises.

4. Learned counsel for the Commission vehemently argued that the financial constraints arising from inadequate tariff or accumulated regulatory assets do not justify non-compliance of RPO. Referring to the judgment of Hon'ble Supreme Court in <u>Hindustan Zinc Limited v. RERC 2015 12 SCC 611,</u> the learned counsel submitted that RPO Regulations are mandatory in nature and the statutory duties must be complied with irrespective of the financial capacity of the obligated entity. He would submit that economic hardship, if any, cannot justify non-compliance with statutory environmental duties.

5. The learned counsel also referred to judgment dated 20.04.2015 of three-member bench of this Tribunal in OP No.1/2013 wherein this Tribunal has unequivocally mandated strict monitoring and enforcement of RPO obligations while cautioning the Electricity Regulatory Commissions not to dilute statutory compliances.

6. We have given our consideration to the rival contentions of the partis and submissions made on their behalf by their respective counsels. We have also perused the written notes submitted the learned counsels.

<u>Our Analysis: -</u>

7. Regulation 4 of RPO Regulations, 2012 issued by the Commission enjoins upon every obligated entity to purchase electricity from renewable sources for fulfilment of a definite minimum percentage of the total quantum/consumption under the Renewable Purchase Obligation as specified in the table given in the said regulation. Regulation 11 of these regulations provides for consequences of default on the part of the obligated entity in fulfilling the Renewable Purchase Obligation and is extracted hereinbelow: -

> ***"11. Effect of default:***
>
> *(1) If an obligated entity fails to fulfill 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 in the manner as directed by the Commission, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission:*
>
> *Provided that the fund so created shall be utilized, as may be directed by the Commission, for purchase of the REC and/or promotion of renewable sources of energy;*
>
> *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 fulfillment of the obligations, out of the amount in the fund;

Provided further 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;

(2) Where any obligated entity fails to comply with the obligation to purchase the required minimum quantum of purchase from Renewable Energy Sources or the Renewable Energy Certificate(s), 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 Certificate(s), the obligated entity may approach the Commission for carry forward of compliance requirement to the next year. However, credit for excess *renewable energy purchase would not be adjusted in the next year.*

Provided that where the Commission has consented to the carry forward of compliance requirement, the provision of clause 11(1) of the Regulation or the provision of section 142 of the Act shall not be invoked;

(3) The penalty enforced by the Commission on the obligated entity shall not be a pass through in the Aggregate Revenue Requirement, in case the obligated entity is a Distribution Licensee."

8. As per the said Regulation 11(2), an obligated entity is liable to penalty under Section 142 of the Electricity Act, 2003, in case it fails to comply with the RPO. The only exception is carved out in the proviso attached to Regulation 11(2) and the same applies where the obligated entity faces a genuine difficulty in complying with RPO because of non-availability of certificates. In that case also, the obligated entity has to approach the Commission for appropriate relief i.e. carry forward of compliance requirement to the next year.

9. Section 142 of the Electricity Act, 2003 prescribes maximum penalty of Rs.1,00,000/- (Rupees one lakh) for each contravention of any of the provisions of the Electricity Act or the rules or the regulations made thereunder or any directions issued by the Commission and additional penalty extending to Rs.6000/- (Rupees six thousand) for every day, in case of continued failure, till the failure continues after the contravention of the first such direction.

10. We agree with the submissions advanced by the Commission's counsel that compliance with RPO is mandatory in view of Regulations 4 and 11 of the RPO Regulations, 2012 and financial constraints or tariff inadequacy cannot be accepted as a ground to justify non-compliance of these obligations. Having said so, we hasten to add that the financial constraints or tariff inadequacy can be put forward by an obligated entity as a mitigating factor to claim minimum possible penalty under Section 142 of the Electricity Act, 2003.

11. As we have already noted that Section 142 of the Electricity Act, 2003 provides only the maximum penalty that can be imposed for non-compliance of RPO. It does not prescribe any minimum penalty. Therefore, the Commission ought to have considered the contentions of the appellants in order to draw a balance between the rights of general public for clean environment and the economic position of the appellants in order to arrive at justified amount of penalty to be imposed upon the appellants. However, the Commission appears to have straightaway proceeded to impose maximum penalty on the appellants as provided under Section 142 of the Electricity Act, 2003 without providing reasons for such harsh treatment to the appellants.

12. In the judgment dated 21.07.2025 passed by this Tribunal in appeal nos.69-72 of 2018, this Tribunal has referred to the Statutory Advices dated 15.12.2010 and 01.02.2013 issued by the Commission itself to the Government of NCT of Delhi wherein the Commission has acknowledged that there has been significant gap between the Annual Revenue Requirement of the Discoms in Delhi and the revenue available through tariff which places additional interest burden on the consumers by way of carrying cost on the additional market borrowings which is to be resorted to by the Discoms to meet this gap. Thus, the Commission has itself admitted the non-cost-reflective tariff determination over the years for the appellants which impairs their ability to make payment to the generating companies for the power procured from them, thereby leading to regulation of power.

13. Even the Supreme Court in recent judgment dated 06.08.2025 in Writ Petition (C) 104 of 2014 BSES Rajdhani Power Limited & Anr. v. Union of India & Ors. along with connected Writ Petitions / Civil Appeals has frowned upon the regulatory Commissions for not taking strong decisions on the basis of the statutory mandate and in creating regulatory assets over and above all permissible limits, thereby creating an egregious situation where the regulatory assets grow beyond proportion. Several directions have been issued by the Hon'ble Supreme Court in the said judgment, *inter alia,* that the tariff ought to be cost reflective, the revenue gap between the approved ARR and the estimated annual revenue from approved tariff ought to be in exceptional circumstances and the regulatory assts should not exceed 3% of the ARR and must be liquidated within a period of three years.

14. Thus, it is manifest that the precarious financial situation in which the appellants found themselves in the FYs in question i.e. 2012-13, 2013-14 and 2014-15 was a creation of the Commission itself which had failed to determine cost reflective tariff for the appellants thereby creating regulatory assets enormously. The financial constraints faced by the appellants, which prevented them from complying with the RPO during these financial years, was not their own creation. The same is clearly attributable to failure on the part of the Commission itself in taking strong decisions to mitigate the economic crises faced by the appellants.

15. The Commission ought to have taken these extenuating facts and circumstances into consideration while deciding the quantum of penalty to be imposed upon the appellants for non-compliance of RPO. Failure on the part of the Commission in doing so renders the impugned order not sustainable in the eyes of law. It is not only unjustified but also a total miscarriage of justice to penalize the appellants for non-compliance of RPO which was due to a situation created by the Commission itself and not attributable to the appellants.

Conclusion: -

16. Hence, we are unable to sustain the impugned order of the Commission as the same is not only erroneous but also absolutely unjustified in the facts and circumstances of the case. The penalty imposed upon the appellants vide the impugned order is absolutely disproportionate to the default committed by them and has been imposed without considering the circumstances in which the default had occurred. The impugned order, therefore, is hereby set aside.

17. We hold each of the appellants liable to penalty of Rs.5,000/- (Rupees five thousand only) for each of the Financial Years 2012-13, 2013-14 and 2014-15 for failure on their part in complying with the Renewable Purchase Obligations under RPO Regulations, 2012.

18. The appeals stand partly allowed in these terms.

Pronounced in the open court on this the 15th day of September, 2025.

(Virender Bhat) Judicial Member	(Sandesh Kumar Sharma) Technical Member (Electricity)

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