

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

**APPEAL NO. 106 of 2016
AND
APPEAL NO. 65 OF 2017**

Dated : 21st August, 2019

**PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

APPEAL NO. 106 of 2016

In the matter of:

M/s Green Energy Association

Sargam, 143, Taqdir Terrace,
Near Shirodkar High School,
Dr. E. Borjes Road, Parel (E),
Mumbai - 400 012

.... **Appellant**

VERSUS

1. Chhattisgarh State Electricity Regulatory Commission

Irrigation Colony, Shanti Nagar
Raipur-492001 Chhattisgarh

2. Chhattisgarh State Power Distribution Co. Ltd.

Vidyut Sewa Bhavan, Danganiya,
Raipur- 492001

3. Bhilai Steel Plant

Steel Authority of India
(Town Electrical Engineering Department)
Ispat Bhavan, Bhilai
Distt- Durg- 490001

4. Jindal Steel & Power Ltd.

Kharisa Road, P.B. No. 1
Raigarh- 496661

5. Chhattisgarh Renewable Energy Development Agency

CSERC Building, 2nd floor,
Irrigation Colony, Shanti Nagar,
Raipur- 492001, Chhattisgarh

..... **Respondents**

Counsel for the Appellant(s) : Mr. Parinay Deep Shah
Ms. Ritika Singhal
Ms. Swagatika Sahoo
Ms. Surabhi Pandey

Counsel for the Respondent(s): Mr. C.K. rai
Mr. Sachin Dubey for R-1

Ms. Suparna Srivastava
Mr. Tushar Mathur for R-2

Mr. Rajiv Shankar Dwivedi
Mr. S. K. Sarkar for R-3

Ms. Divya Chaturvedi for R-4

APPEAL NO. 65 of 2017

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Raipur- 492001, Chhattisgarh
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Mr. Sachin Dubey for R-1

Mr. Pradeep Misra
Mr. Manoj Kr. Sharma for R-2

Ms. Divya Chaturvedi for R-4

J U D G M E N T

PER HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

1. The Appellant, M/s Green Energy Association, Mumbai (in short, the “**Appellant**”) has filed the present Appeal, under Section 111 of the Electricity Act, 2003 (“**Electricity Act**”) assailing the correctness of the impugned Order dated 21.12.2015 passed in Petition No. 44 of 2015(M) wherein the Chhattisgarh State Electricity Regulatory Commission (in short, “**State Commission**”) has dismissed the Petition as being non-maintainable due to lack of locus standi on the part of the Appellant and the Impugned Order dated 16.06.2016 passed in Suo-Motu Petition No. 41 of 2015(M) by wherein the State Commission has provided an additional time period of twelve months to Chhattisgarh State Power Distribution Company Ltd. (in short, “**CSPDCL/Respondent No.2**”) for the fulfillment of their RPO for the year 2013-14 under the Chhattisgarh State Electricity Regulatory Commission (Renewable Purchase Obligation and REC framework Implementation) Regulations, 2013 (RPO Regulations).

2. Brief facts of the Appeal:

2.1 M/s Green Energy Association, Appellant herein, is a registered Association of companies engaged in the business of renewable energy under REC mechanism and is, therefore, claims to be a generating company within the meaning of Section 2(28) of the Electricity Act, 2003.

2.2 Respondent No. 1 herein is Chhattisgarh State Electricity Regulatory Commission which was originally constituted under the provisions of the Electricity Regulatory Commission Act, 1988 (which has since been repealed and replaced by the Electricity Act, 2003) (State Commission). The State Commission at present is exercising powers and discharging functions under the provisions of the Electricity Act, 2003.

2.3 Respondent No. 2, Chhattisgarh State Power Distribution Company Limited is the distribution licensee of the State established from the dissolution of Chhattisgarh State Electricity Board.

2.4 Respondent No. 3 - Bhilai Steel Plant and Respondent No. 4 - Jindal Steel and Power Plant Limited are the steel manufacturing plants located in the state of Chhattisgarh.

2.5 Respondent No. 5, Chhattisgarh Renewable Energy Development Agency is the Nodal Agency of the Government of Chhattisgarh for promotion

and popularization of Renewable Energy and energy conservation in the state of Chhattisgarh.

2.6 In Appeal No. 106 of 2016, the Appellant herein is aggrieved by the fact that the State Commission, by the Impugned Order dated 21.12.2015, has dismissed the Petition as being non-maintainable due to lack of locus standi on the part of the Appellant. The State Commission has not decided the matter on merits as to whether the obligated entities have acted against the provisions of the CSERC RPO Regulations and the Electricity Act, 2003 by not complying with the shortfall in RPOs for Financial Years 2013-14 and 2014-15.

2.7 In Appeal No. 65 of 2017, the Appellant is assailing the correctness of the impugned Order dated 16.06.2016 passed by the State Commission in Suo-Motu Petition No. 41 of 2015(M) wherein the State Commission has provided an additional time period of twelve months to the Respondent No.2/CSPDCL for fulfillment of their RPO for the year 2013-14 under the RPO Regulations, 2013.

3. The instant appeals have been filed by the Appellant on the following questions of law:

3.1 Appeal No. 106 of 2016 :-

- A. Whether the Impugned Order has been passed in contravention of provisions of the CSERC RPO Regulations?
- B. Whether the Impugned Order has been passed by the State Commission in ignorance of the mechanism of REC scheme?
- C. Whether the State Commission wrongfully overlooked the term “interested party” as mentioned in Regulation 9 of the CSERC (conduct of business) Regulations, 2009?
- D. Whether the State Commission was justified in deciding that since none of the members of the Appellant association have plants operating in the State of Chhattisgarh, they are not within its jurisdiction and thus Petition No. 44 of 2015(M) is non-maintainable?
- E. Whether the Renewable Energy Certificate mechanism is bound by the geographical boundary of any particular state?
- F. Whether the State Commission has correctly interpreted the judgments of the Hon’ble Supreme Court and this Tribunal?

3.2 Appeal No. 65 of 2017 :-

- A. Whether State Commissions can permit carry forward of RPO despite availability of RECs in the market?
- B. Whether the State Commissions have a mandate to promote and sustain the REC mechanism introduced by CERC?

4. Written submissions filed by the learned counsel, Mr. Parinay Deep Shah, appearing for the Appellant are as under:

4.1 The Appellant herein is a registered Association of companies engaged in the business of Renewable Energy (RE). The major focus of the members of the Appellant Association is on developing and installing Solar PV power plants under various policies of Centre, State and under REC mechanism in India. The Appellant is registered in Maharashtra and has no members in the State of Chhattisgarh.

4.2 The instant Appeal is aimed at challenging the validity and legality of Order impugned dated 21.12.2015 passed by the Chhattisgarh State Electricity Regulatory Commission in Petition no. 44 of 2015 (M), which was filed by the Appellant in the matter of non-compliance of Solar Renewable Purchase Obligation ("RPO") for FY 2013-14 to 2014-15 by the obligated entities in accordance with the CESRC (Renewable Purchase Obligation and REC framework Implementation) Regulations, 2013 ("CSERC RPO Regulations"). The State Commission vide impugned order dismissed the petition at the time of admission on the grounds that the Appellant did not have the requisite locus standi to prefer the petition before the State Commission as the Appellant did not have any members in the state.

4.3 It is germane to mention the necessary provisions of CSERC RPO Regulations. Regulation 4.3 of CSERC RPO Regulations stipulates the

minimum percentage of RPO to be fulfilled by obligated entities. It is pertinent to note that Regulation 5, of the aforementioned Regulations, states that certificates issued under the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (“CERC REC Regulations”) shall be valid instruments for the discharge of the mandatory renewable purchase obligations. Furthermore, clause 2 of Regulation 5 clearly states that the obligated entities shall act consistent with the CERC REC Regulations when procuring REC for RPO compliance. Regulation 9 of CSERC RPO Regulations gives the consequences in case of default in RPO compliance by obligated entities. As per Regulation 9, the State Commission can allow carry forward of RPO targets to the next year only if the obligated entities can show that they faced genuine difficulty in complying with RPO due to non-availability of power from renewable energy sources and non-availability of REC.

4.4 The obligated entities, Respondents No. 2 to 4 herein, have not complied with their RPO for FYs 2013-14 & 2014-15. Aggrieved by this repeated non-compliance of the Respondents, the Appellant herein has filed Petition No. 44 of 2015 before the State Commission. However, the State Commission dismissed the Petition completely overlooking the nature of the REC mechanism, its objectives and purpose. The impugned order is in

contravention of the provisions of Electricity Act, 2003, CSERC RPO Regulations, and the relevant provisions of the CERC Regulations.

4.5 Appellant had the necessary Locus Standi to file Petition No. 44 of 2015 as locus, in the instant case and cannot be limited by territory. The State Commission has wrongfully determined that the Appellant did not have the necessary locus to file the Petition since it had no members located in the state of Chhattisgarh. The State Commission does not provide any reasoning substantiating why having members in the state would give the Appellant locus standi to maintain the petition before the State Commission. The State Commission has failed to appreciate that the Appellant being a registered association of renewable energy developers under the REC mechanism is directly interested in RPO compliance of Respondents No. 2 to 4 as every generator under the REC mechanism is directly affected and aggrieved by the obligated entity's continuous failure to fulfill RPOs from 2013 till date.

4.6 The State Commission has failed to understand the REC mechanism. The REC mechanism has been envisaged by the CERC as enabling provision/promotional mechanism under section 66 of the Electricity Act, 2003 under developmental of power market and the CERC REC Regulations. The Statement of Objects and Reasons to the CERC REC Regulations specify that REC mechanism seeks to address the mismatch between availability of renewable energy sources and the requirement of obligated entities to meet

their RPOs. Therefore, as the renewable sources are not evenly distributed and available only in certain parts of the country, an appropriate mechanism such as REC was evolved. Through, such mechanism, the renewable energy generators can now sell electricity to the local distribution licensee at the rates of conventional energy and recover the balance cost by selling the REC to other distribution licensees/obligated entities to meet their RPO. Therefore, the entire scheme of RECs envisages the certificates to be sold inter-state to address mismatch of distribution of renewable sources.

4.7 Furthermore, this Tribunal in its Judgment dated 16.04.2015, passed in Appeal No. 258 of 2013, *Indian Wind Power Association v. GERC and Ors.*, has noted and reiterated the pan-Indian nature of the REC mechanism. In the said judgment, this Tribunal has noted that REC is issued only to RE generators for generation of renewable energy and is an alternative mode provided to the RE generators for recovery of their costs. It was, further, noted that REC is an alternative to physical procurement of renewable energy. This Tribunal has, further, noted that though the REC mechanism was evolved to exploit the renewable energy sources in States having abundant potential of renewable energy for the benefit of States which do not have adequate potential of renewable energy sources, is also useful for meeting the RPO of obligated entities of resource rich States. REC mechanism has opened up the market for the renewable energy generators

outside the State in which they are located helping in unconstrained growth of the renewable energy sector and needs to be promoted by the State Commissions and the introduction of REC has opened up the market for RE generators and has provided a mechanism where the physical form of energy is sold to the distribution licensee and consumers within the State, the green attributes of such energy is sold in the pan India market through the power exchange. REC is a mechanism for facilitating accelerated development of renewable energy potential of the resource rich States thus serving the object of the Electricity Act 2003 for promotion of renewable sources of energy. It was also noted that by treating REC as a valid instrument for discharge of mandatory RPO, the State Commission has only followed the mandate of the Electricity Act 2003 under Section 86(1)e) for promotion of renewable sources of the energy in the State.

4.8 The findings of this Tribunal regarding the pan-India nature of RECs in Appeal No. 258 of 2016 was reiterated at para 23-24 of its judgment dated 20.04.2016 in OP No.1, 2 and 4 of 2013. Further, this Tribunal has already held that registered associations having clearly identifiable members have the locus to prefer an appeal and petition under Section 111 and 121 of the Electricity Act 2003 in Appeal No. 24 of 2013 and OP No. 1, 2 and 4 of 2013 respectively. In OP No. 1, 2 and 4 of 2013, this Tribunal has discussed the maintainability of the petitions filed by the Appellants. This Tribunal reiterates

its findings in Appeal No. 24 of 2013 which had relied upon Appeal No. 148 of 2010 and holds that the petitions are maintainable as filed by registered associations having clearly identifiable members. This Tribunal determined that it is enough for the association to be registered and have clearly identifiable members to prefer the petitions against the State Electricity Regulatory Commission asking for enforcement of RPO compliance.

4.9 It is pertinent to note that the petitioner in OP No. 4 of 2016 i.e. Himachal Power Producers Association was seeking enforcement of RPO compliance by all the 26 State Electricity Regulatory Commissions (“SERCs”). The aforementioned petitioner consists of small hydro power producers located only in the state of Himachal Pradesh. Yet, this Tribunal has upheld that the petitioner has the locus to seek relief against every state commission in the country asking them to enforce the RPO compliance of the obligated entities located in the state. This order is illustrative in nature to show that the renewable energy generator is not required to be present in a particular state to seek remedy from that state electricity regulatory commission. Similarly, OP No. 1 and 2 of 2013 was filed by an association of wind energy developers against all the SERCs seeking RPO compliance. As per the information available on the website of MNRE and REC Registry of India, wind energy generators are situated only in certain windy states. Not all states in India have the terrain and climatic conditions to support wind energy

generators. However, this Tribunal observed that the Association had the locus to file Petition under Section 121 of Electricity Act 2003 against all the SERCs seeking enforcement of RPO Regulations. Hence, it can be concluded that geographical location of the renewable energy generator is not a consideration to seek remedy from the SERC.

4.10 A bare perusal of the Annexure 4 of the Procedure for Redemption of Renewable Energy Certificate, issued by the CERC dated November, 2015 in compliance to Regulation 3(3) of the CERC REC Regulations, shows that market clearing price is the only requirement to be considered while trading conducting RECs through power exchange. The geographical location of the REC holder is not a consideration for the obligated entities seeking to procure REC but only the market determined price. From the above, it is clear that the entire nature of RECs is that it should be traded inter-state at a price discovered by the market. Therefore, every RE generator registered under REC mechanism is affected if the obligated entity does not fulfill its RPO by purchase of renewable energy/RECs as recognized/mandated under the state-specific RPO regulations. Further, this Tribunal in its earlier judgments has allowed registered associations with clearly identifiable members in the state of Himachal Pradesh seek enforcement of RPO compliance by all the state electricity regulatory commissions. Therefore, this Tribunal in its previous judgments has recognized the pan-Indian nature of RECs and that

even renewable energy generators situated outside the state can be aggrieved by the continuous non-compliance of RPOs by obligated entities in every state. In view of the judgments of this Tribunal, it is clear that the Appellant is not mandated to have members in the state to have locus standi and be an 'aggrieved party'. The Appellant like every other renewable energy generator in the country is aggrieved by the constant non-compliance of RPOs by the obligated entities in Chhattisgarh.

4.11 The CSERC RPO Regulations are based on the CERC Regulations and direct obligated entities to procure REC in accordance with the provisions of CERC Regulations. The CSERC Regulations while recognizing REC, issued under CERC REC Regulations, as valid instrument for RPO fulfillment, nowhere mention that obligated entities can procure REC only from those RE generators located within the state of Chhattisgarh. In fact, Regulation 4.5 clearly states that *non-availability of renewable sources in the area of distribution licensee will not be accepted as a ground for exemption from RPO or for curtailing the RPO targets*. Thus, it can be concluded that the CSERC RPO Regulations do not recognize any geographical limitation for RPO compliance.

4.12 If the Impugned Order is upheld it will result in destruction of the spirit and objective with which the REC mechanism was introduced. It would lead to an anomalous situation contrary to CSERC RPO Regulations and CERC

REC Regulations, wherein obligated entities will purchase RECs only from RE generators located within the State and therefore, in the absence of such purchase only the state based generators are affected. It will result in reading down of the CERC REC Regulations and creation of intra-state power exchange which is an anathema to the objective of REC mechanism.

4.13 The RPO compliance by the distribution licensees in the State of Chhattisgarh has been dismal. The total Solar RPO targets in the State of Chhattisgarh, to be complied with by the Respondents in the years 2011, 2012, 2013 and 2014 were 45.8125, 95.620, 97.7650 and 164.28 MUs respectively and the targets achieved were 2.469, 5.74, 5.84, and 29.677 MUs for each respective year. The deficit in compliance in the aforesaid period was 43344, 89880, 91925, and 134607 in Solar REC units, i.e., a cumulative deficit of approximately 359756 Solar RECs have remained unsold. Therefore, the Solar REC market has incurred losses of Rs. 1,25,91,46,000 approximately, which shows that the deficit in the meeting the solar RPOs in year 2014 was 134.6071 MUs out of the targeted 171.377 MUs, i.e., around 1,41,627 solar RECs remained unsold. In the year 2014 itself the losses incurred by Solar REC traders, in respect of the non-compliance by the obligated entities of Chhattisgarh amounts to Rs. 49,56,91,570.5 approximately. Due to this continuous and deliberate non-compliance of Respondents No. 2 to 4, despite REC being available in the

market, the number of RECs available in the power exchange far exceeds the demand and thus the prices of RECs have fallen sharply over the years. Therefore, it is established beyond doubt that the members of the Appellant association are financially aggrieved and affected by the conduct of the obligated entities, Respondents No. 2 to 4 herein.

4.14 The State Commission has the necessary jurisdiction under Section 86(1)(e), 142 of the EA 2003 and Regulation 9 of the Conduct of Business Regulations to adjudicate the issue of RPO non-compliance. The State Commission has not given proper reasoning for dismissing the Petition filed before it. In the impugned Order, the State Commission noted that it has jurisdiction to decide matters related to the State of Chhattisgarh and that the State Commission only has jurisdiction over the generators situated in the state under Section 86(1)(e) of the Electricity Act 2003. However, it completely overlooked that Respondents No. 2 to 4 are obligated entities as per the RPO Regulations notified by the State Commission and are thus contravening the provisions of its own Regulations by failing to fulfill RPO obligations by purchase of RECs/renewable energy. Therefore, only the State Commission has the power to address any such complaint filed under Section 142 of the Electricity Act 2003 as by the Appellant impugning non-compliance of the State Commission's orders and regulations by entities situated in the state.

4.15 From the language of Section 142 it is understood that “any person” can file a complaint before the State Commission to bring to its attention any person who has contravened any of the provisions of Electricity Act 2003 or the rules or regulations. The complainant doesn’t have to be a consumer or have a physical presence in the State to satisfy the requirements of being “any person” under Section 142 of the EA 2003. It is enough that there should be a contravention of the State Commission’s directions/regulations/orders by any person. Section 2 (49) defines ‘person’ as - *including any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person*. Therefore, to read Section 2(49) and 142 harmoniously, a complaint may be successfully maintained *inter alia*, by any association and not necessarily located within the state. It is harmful to introduce such nexus when the legislators have specifically excluded such requirement. However, if the argument of the Respondents that the Complainant must be within the jurisdiction of the Commission under Section 142 is accepted, it will amount to reading the words ‘Complainant within the jurisdiction of the Commission’ into Section 142. Further such an interpretation will lead to absurd consequences. E.g. where a generator located outside the state has a dispute with the State Discom, the State Commission within whose jurisdiction the Discom operates, can assume jurisdiction over the dispute under Section 86(1)(f). However after the SERC pronounces the order on the dispute, the Discom will be able to ask for

enforcement under Section 142 since it lies within the State Jurisdiction but not the Generator since it lies outside the jurisdiction of the Commission! Such interpretation of Section 142 which leads to such absurd consequences cannot be accepted. If an interpretation of a provision leads to absurdity such interpretation must be rejected and the logical interpretation should be adopted. The same has been held by the Hon'ble Supreme Court in *M. Nizamuden v. Chemplast Sanmar Limited and Ors.* (2010) 4 SCC 240.

4.16 It is a settled principle of law that the Courts cannot add or subtract words to a statute. The presumption while interpreting is always that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. The Courts have to administer the law as they find it, and it is not permissible for the Court to twist the clear language of the enactment, in order to avoid any real or imaginary hardship which such literal interpretation may cause. This rule of interpretation has been upheld by the Hon'ble Supreme Court in *Nasiruddin & ors. v. Sita Ram Agarwal*, (2003) 2SCC 577. In the instant matter, the term "any person" has to be read in harmony with the rest of the statute. In both Sections 111 and 121 the legislature has been careful to restrict the right to approach this Tribunal only to "aggrieved person" and "interested party", respectively. Such a requirement has been deliberately omitted in Section 142, which should be interpreted in line of these

provisions. This principle has been recognized by the Delhi Electricity Regulatory Commission's order dated 17.11.2014 in Petition No. 19 of 2014, a petition filed by the Appellant herein seeking RPO compliance by the Delhi distribution licensees. Thus, while "any person" may not be given such a wide interpretation to make Section 142 a provision for PIL, it cannot have a higher threshold than is required under Section 111 and 121 of EA 2003.

4.17 The State Commission, in its preliminary written submissions dated 03.08.2016, has stated that the State Commission only has jurisdiction over generators situated in the state. Firstly, this argument is erroneous and irrelevant in as much as the present matter pertains to Commission exercising jurisdiction under Section 142 over the licensee/obligated entities in the State. There is no requirement of a 'dispute' under Section 142, in as much as it gives the power to the State Commissions to enforce their orders/regulations. *Without prejudice* to the aforesaid it is settled law that in the event, if the Distribution Licensee's procurement of power is involved in the State, the State Commission alone will have the jurisdiction under Section 86(1)(f) to adjudicate upon the dispute. The location of the selling party is irrelevant. Such principle has been upheld by this Tribunal in *Lanco Kondapalli Power Private Limited v. Haryana Electricity Regulatory Commission*, Appeal No.156 of 2011, *Lanco Power Limited v. Haryana Electricity Regulatory Commission*, Appeal No. 15 & 52 of 2011. This Tribunal

held that the supplier of electricity being at a different place does not in any manner oust the jurisdiction of the State Commission u/s 86(1)(f) to adjudicate upon the disputes between the parties. It is important to note that Respondent No. 2 is satisfying its power needs from a 20 MW solar pv power plant, operated by Essel Infra, located in Chandrapura (Maharashtra) outside the state of Chhattisgarh.

4.18 It is a settled principle of law that jurisdiction will lie where the cause of action arose. The Hon'ble Supreme Court has observed that the jurisdiction is conferred upon a court even when part of cause of action arises this has been upheld in *Indian Performing Rights Society Ltd. v. Sanjay Dalia and Anr.*, Civil Appeal No. 10643-10644 of 2010 and in *Dhodha House v. S.K. Maingi* (2006) 9 SCC 41. In the instant appeal, cause of action arose in the state of Chhattisgarh as the non-complying obligated entities are located within that State and alleged to have violated their obligations as per specific regulations formulated by the State Commission. Therefore, it is only the State Commission which will have jurisdiction to address the issue of non-compliance under a Section 142 petition filed by aggrieved parties.

4.19 It is pertinent to note that as per Section 86(1)(e) of Electricity Act 2003 the State Commission is enjoined to promote cogeneration and generation of electricity from renewable sources of energy. The object sought to be achieved under Section 86(1)(e) is promotion of renewable energy in the

country including protection of all mechanism to encourage the renewable energy, such as the REC mechanism. Each State Commission has the jurisdiction over its own State distribution licensee under Section 64(5) of the Act read with Section 86(1)(e). Also, while the last part of Section 86(1)(e) states that the distribution licensee has to buy some percentage of total electricity consumed by it, within its area, from a renewable source of energy there are no stipulations that the renewable energy generator has to be located within the area of a distribution licensee. Presently, the distribution licensee is satisfying a part of its solar power needs from a 20 MW solar pv plant located outside the state of Chhattisgarh. Thus, the State Commission's argument/understanding that it will only have jurisdictions to adjudicate any dispute filed by renewable energy generator located within the state is erroneous and untenable in law, since there is no question of adjudication upon a dispute under Section 142, but rather enforcement of its own Regulations.

4.20 As per Regulation 9(1) of the CSERC Conduct of Business Regulations, 2009 (Conduct of Business Regulations), the State Commission may initiate proceeding on a petition filed by any affected or interested person. The aforementioned regulations do not have the precondition that the affected/interested person must be situated in the state of Chhattisgarh. From the above made submissions, it can be concluded that the Appellant is not

only an affected but also an aggrieved party and thus the Petition filed by it was maintainable under Section 142 of Electricity Act 2003 and Regulation 9 of CSERC Conduct of Business Regulations seeking RPO compliance by the obligated entities in the state of Chhattisgarh. The geographical location of the Appellant is irrelevant in the present case.

4.21 Contrary to the arguments raised by the Respondents, Petition No. 44 of 2015 was not in the nature of a Public Interest Litigation (“PIL”). The concept of PIL was introduced for the protection of public interest. Through PIL any member of the public can approach the Courts seeking action against any public wrong or harm being committed even if he is not personally affected by the said wrong. The Appellant can and has filed a complaint under Section 142 of the Electricity Act, 2003 and the Commission has the jurisdiction to punish for non-compliance of its own regulations. It is rather tragic, that the Commission instead of enforcing its own regulations is keenly supporting the transgression by the Discoms and attempting to prevent the Petitioner from even pursuing enforcement. In the instant matter the Appellant, being an association of renewable energy developers is greatly aggrieved and affected by the continuous non-compliance of Respondents No. 2 to 4. There are currently 35, 37,124 RECs lying unsold in the market. The reluctance of the obligated entities in Chhattisgarh and the failure of the State Commission to enforce its own regulations is contributing to such

unsold inventory. The members of the Appellant association are directly financially aggrieved due to such non-compliance of Regulation 4,5& 9 of the CSERC RPO Regulations.

4.22 In the event the order of the State Commission is upheld, the Appellant will be bereft of any other remedy in law. The CERC does not have the jurisdiction to entertain the issue of RPO non-compliance by obligated entities in Chhattisgarh as the Respondents Discoms being state distribution licensees are under exclusive jurisdiction of the State Commission. Accordingly, it will be fruitless to approach the respective state commission where each member is geographically located as such state commission will not have the jurisdiction over the obligated entities of the Chhattisgarh. Even the High Court of Chhattisgarh cannot be approached since RPO compliance is matter of tariff affecting the consumers of the state and can consequently be adjudicated only by the State. It is settled law that only the respective state commissions being expert bodies will have jurisdiction over tariff-related matters. This has been upheld by the Hon'ble Supreme Court in *WBERC v. CESC Ltd.* (2002)2SCC715 in para 103. Therefore, if the impugned order is upheld grave injustice will be done to the Appellant as it will be left without any alternate and effective remedy. Further, it pertinent to note that the members of the Appellant are not adequately protected before the State Commission in matters of RPO non-compliance. The State Commission by its

order dated 16.06.2016 in Suo Moto Petition No. 41 of 2015 has allowed the Respondent No. 2/distribution licensee carry forward of RPO compliance for 2013-14 & 2014-15. Such a carry forward has been allowed in contravention to Regulation 9 of the CSERC RPO Regulations. It is pertinent to note that the State Commission by its tariff order for FY 2013-14 & 2014-15, had allocated funds to the distribution licensee for purchase of renewable energy/RECs. However, despite such funds, the distribution licensee is in continuous failure of its RPOs. It is pertinent to note that as per the Order of the State Commission JSPL, Respondent No. 4 herein, complied with its RPO, after the period was over, by purchase of RECs. This shows that the Respondents No. 2 to 4 would have to buy RECs to comply with its RPO thus making the Appellant an aggrieved and affected party. The State Commission's order dated 16.06.2016 is in contravention to Section 86(1)(e) and defeats the entire purpose of the CSERC RPO Regulations. Therefore, it is necessary that aggrieved parties like the Appellant be allowed to represent before the State Commission and assist them in effective enforcement of the CSERC RPO Regulations. The judgments relied upon by the Respondents do not support their case.

4.23 Further, none of the judgments mentioned by the Respondents No. 1 and 4, in their Reply to the Appeal, are relevant in instant matter. The Respondents have relied on *GRIDCO v. Gajendra Haldea* (2008) 13 SCC

414 to show that the Appellant did not have the necessary locus. In this case the question before the Hon'ble Supreme Court was whether the Respondent was an "aggrieved person" for the purposes of Section 111. The Hon'ble Supreme Court never went into interpretation of Section 142 and simply held that the Section was not applicable since the question at hand was contractual in nature arising out of a PPA and thus the Respondent not being a party to the PPA had no locus. Moreover, the Gajendra Haldea case was in relation to an intra-State sale of electricity and the Petitioner no way was affected by such intra state sale of electricity. In the instant case, the Appellant is an Association of the companies engaged in the business of Renewal Energy and non-compliance of the RPO may result in their being unjustly deprived and denied of something which they would have been entitled to and obtained in the usual course.

4.24 The Respondents have also relied on *Pushpendra Surana v. CERC and Ors.* [IA No. 7/ 2014 and IA 8/2014] which is not applicable to the present situation. In the aforementioned matter, the Appellant had filed an appeal against CERC's order wherein CERC held that it has the jurisdiction to provide redressal to Coastal Gujarat Power Limited (CGPL) & Adani Power Limited (APL) seeking compensation on the increase in the coal price as a result of promulgation of Indonesian Regulations. This Tribunal had dismissed the aforementioned matter as the Appellant was not a consumer of

distribution licensees of Haryana or Gujarat (the beneficiaries of the power supplied from CGPL and APL) and therefore not aggrieved/affected by the CERC order. In *Bharat Jhunjhunwala v. UPERC and Ors.* [IA 392,393,394 and 399/2012], the Appellant had admittedly filed a PIL objecting to the approval of PPA between a distribution licensee and generator. This Tribunal dismissed the appeal as the Appellant was not even a consumer of the distribution licensee and was not affected by the PPA. In both these matters, the Appellants were members of the public who were not consumers of the distribution licensees in question and consequently not aggrieved/affected by the relevant PPAs. The aforementioned orders by this Tribunal do not apply to the present situation where the Appellant is directly affected by the obligated entity's non-compliance. The Appellant is not a random member of the public but an association of renewable energy generators having pan-India presence seeking RPO compliance under state-specific regulations.

4.25 Similarly, the other judgments cited by the Respondents, *Thammanna v. K Veera Reddy and Ors.* (1980) 4 SCC 62, *Gopalbandhu Biswal v. Krishna Chandra Mohanty* (1998) 4 SCC 447, *Ravi Yashwant Bhoir v. District Collector* (Civil appeal no. 2085 of 2012), all deal with the question of locus and who can file an appeal. From a bare perusal of all the judgments relied upon by the Respondents, it is clear that locus doesn't depend upon the geographical location of the Appellant/Petitioner but rather on the legal injury

caused to it. Both the Hon'ble Supreme Court and this Tribunal have held that for a party to have locus, in a matter, it must show that it is aggrieved by the act against which it is approaching the courts.

4.26 The Hon'ble Supreme Court in the aforementioned judgments has held that for the Appellant to be an "aggrieved person", the Appellant should have suffered a legal injury, legal grievance or been deprived of something it was entitled to. In the instant matter the members of the Appellant association being RE generators under the REC mechanism had the legitimate expectation that the State Commission will enforce its own RPO Regulations to ensure that the obligated entities fulfill their RPO targets. However, the same has not happened and thus the Appellant is an aggrieved person for the purpose of the aforementioned judgments, relied upon by the Respondents.

4.27 In the case in hand the question before this Tribunal is not whether the Appellant is aggrieved for the purpose of Section 111 of Electricity Act 2003. Rather the question is whether the Appellant, an association of RE developers under the REC mechanism being directly affected by the deliberate and continuous non-compliance of Respondents No. 2 to 4, had the locus as "any person" to file Petition 44 of 2015(M) under Section 142 of the Electricity Act 2003 before the State Commission. Further, the State Commission also failed to recognize that in any extent, the Appellant being an

association of renewable energy developers under the REC scheme was financially aggrieved by the Respondent's RPO non-compliance and had the locus to file a petition as 'any affected or interested party' under the Conduct of Business Regulations.

4.28 Appeal No. 65 of 2017 has been filed by the Appellant to salvage the Renewable Energy Certificate (REC) mechanism and in turn to save the business of the R.E. Developers across the nation, including the State of Chhattisgarh. The appeal challenges the impugned Order dated 16.06.2016 passed by the State Commission wherein the State Commission has in-effect allowed a carry forward to Respondent No.2/CSPDCL by providing it a relaxation of 12 months for meeting the RPO for the Financial Year 2013-14. The State Commission has erred in giving the said relaxation, despite the availability of the requisite RECs in the market as mandated under Section 86(1)(e) of the Electricity Act, 2003 and their respective state regulations either by directly procuring energy from renewable energy sources in physical form or purchasing REC, as deemed procurement of renewable energy. The said obligation can be carried forward to the next year only if RECs are not available. However, if the obligated entity fails at fulfilling its RPO even when RECs were available in the market, an amount calculated on the basis of forbearance price of the requisite RECs is required to be deposited as a compensation fund in terms of RPO Regulations which have been enacted

pursuant to Section 86(1)(e) and Section 66 of the Electricity Act, 2003, which provides that certain obligated entities are required to procure certain quantum of energy from renewable sources. Accordingly, the section states that State Commission shall specify, for purchase of electricity from renewable sources of energy, a percentage of the total consumption of electricity in the area of a distribution licensee.

4.29 Pursuant to the obligation under Section 86(1)(e) of the Electricity, Act, 2003, RPO for the Distribution Licensees, Captive users and Open Access users in respect of Solar, Wind and Biomass energy are determined by the State Commission as per RPO Regulations as amended from time to time. Under the REC mechanism, cost of electricity generation from renewable energy sources is classified as cost of electricity generation equivalent to conventional energy sources and the cost for environmental attributes. Renewable Energy generators, like the members of the Appellant Association, have two methods for selling renewable electricity (i) either to sell the renewable energy at preferential tariff; or (ii) to sell electricity generation to distribution companies/third parties and environmental attributes associated with RE generations separately to obligated entities. The REC framework provides an opportunity to the members of the Appellant Association to exchange the environmental attributes in the form of RECs. The legislative framework has thus created a legal fiction, whereby purchase

of REC would be deemed as purchase of renewable energy for RPO compliance. In order to encourage developers into putting in capital for development of solar/renewable energy sources, the Central Electricity Regulatory Commission (CERC) introduced the REC framework through the CERC REC Regulations.

4.30 The objective of the CERC REC Regulations was to develop the non-conventional energy market by issuance of transferable and saleable credit certificate. The minimum and the maximum price of the RECs are fixed by the CERC and the same are referred to as the floor price and the ceiling price. The same are defined in Section 2(f) and (g) of the CERC REC Regulations. Based on these guiding principles, CERC periodically determines the forbearance price and the floor price for both solar and non-solar RECs through its suo-motu orders.

4.31 In terms of Regulation 10(1) of the CERC REC Regulations, the RECs have a validity period of 365 days, after which they lapse. However, owing to the large number of RECs remaining unsold in the market, the CERC has been extending the validity of RECs through its Orders and amendments.

4.32 The impugned order is not the first instance where State Commission has in effect carry-forwarded the RPO of obligated entities even though RECs were available in the market. This Tribunal as well as other forums have consistently allowed carry-forwards to the obligated entities in different states,

thus consistently damaging the REC framework. Similarly, various State Commissions have allowed the carry-forward or waiver of the RPO, despite RECs being available in the market and waived the shortfall in RPO compliance by the obligated entities without providing any cogent reasoning which reflect the failure on part of the State Commission to seriously implement the provisions of the RPO Regulations. Respondent No.2 & 4 have also failed to comply with the RPOs for the FY 2014-15 and the petition for non-compliance with Suo-Motu Petition No. 10 of 2016 is pending before the State Commission. Therefore, orders such as those mentioned above, will eventually lead to decimation of renewable energy market as well as the REC mechanism.

4.33 The REC market is already struggling to stay afloat and such decisions will cumulatively obliterate the demand for RECs. The Solar Power developers who have opted for the REC mechanism and in turn subsidized the solar power cost in the hope of recovering their costs through RECs, will not be able to recover costs or keep the power subsidized. This will result in a huge set back to the renewable power in India. The surplus of RECs available in the power market far exceeds the demand for RECs. Delaying the RPO by another year is also in contravention of Regulation 9 of the RPO Regulations. In terms of fifth proviso of Regulation 9 of the RPO Regulations, the RPO can only be carry forwarded because of non-availability of power

from renewable energy sources or RECs. In fact, the State Commission has noted in its impugned Order that Respondent No.2 has erred in not complying with the RPO despite availability of RECs in the market. State Commission even after noting the same, has went ahead and delayed the RPO, which in effect is a carry-forward of RPO, which can only be done in case of non-availability of renewable energy as well as RECs. The impugned Order dated 16.06.2016, is therefore, in contravention of Regulation 9 of the RPO Regulations as well as various orders of this Tribunal. In view of the above submissions, this Tribunal may allow the appeal and set aside the Impugned Order.

5. Written submissions filed by learned counsel, Mr. C.K. Rai, appearing for the Respondent No.1/Chhattisgarh State Electricity Regulatory Commission are as under:

5.1 The Appellant has filed the present Appeal alleging non compliance of Solar RPO by obligated entities for FY 2013-14 & FY 2014-15 and challenging the Order dated 21.12.2015 passed by the Respondent No.1/CSERC in Petition no. 44 of 2015(M) whereby the State Commission dismissed the same as being non maintainable due to the lack of locus standi of the Appellant.

5.2 Section 82 of the Electricity Act, 2003 provides that every State Government shall within six months from the appointed date, by notification,

constitute for the purposes of this Act, a Commission for the State to be known as the (name of State) Electricity Regulatory Commission.

5.3 Section 86 of the Electricity Act, 2003 deals with the functions of State Commission. It provides that – The State Commission shall discharge the following functions,- namely:-

- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be within the State.....*
- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which the electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State*
- (c) facilitate intra –State transmission and wheeling of electricity.*
- (d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State.....*
- (e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connecting 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.....*

5.4 The reading of the above provisions of the Electricity Act, 2003 makes it clear that Regulatory Commissions are constituted for purpose of discharging functions with respect to particular state. A generator in order to raise its

grievance under section 86(1)(e) in the state commission has to be the generator of that state.

5.5 Admittedly, Green Energy Association is the association of generators who have no generating plant in the State of Chhattisgarh and, in fact, it has no member from the State of Chhattisgarh. Members of Green Energy Association have established their power plants outside the state of Chhattisgarh. Hence it is submitted that Green Energy Association has no locus standi to file the petition under section 142 and 146 of the Electricity Act, 2003.

5.6 Further, the "Locus Standi" is the right of a party, to an action to appear and be heard on the question before any tribunal. Before passing the impugned order the state commission has given adequate opportunity to the appellant to satisfy the commission on the issue of Locus Standi. The judgments relied by the Appellant viz., South India Sugar Mills Association (Karnataka) Vs. Karnataka Power Transmission Corporation Limited & Ors. (Appeal No. 148 of 2010), Indian Wind Energy Association Vs. Gujarat Electricity Regulatory Commission & Ors. (2014 ELR (APTEL) 897 and Indian Wind Energy Association & Anr.Vs. Andhra Pradesh Electricity Regulatory Commission & Ors. (O.P. No. 1 of 2013 & I.A. No. 291 & 420 of 2013, O.P. No. 2 of 2013 & O.P. No. 4 of 2013) are not applicable to the facts of the present case, as in those cases there are specific finding to the effect

that concerned associations were registered in the concerned State and had members who had established generating plants in that State whereas in the present case admittedly the Appellant Association is registered in Maharashtra and has no member from Chhattisgarh State.

5.7 On the issue of *Locus Standi*, the State Commission further relies on the judgment dated 13.08.2008 passed by Hon'ble Supreme Court in Civil Appeal No. 5722 of 2006 titled Grid Corporation of Orissa Ltd. vs Gajendra Haldea & Ors. {(2008)13 SCC414} wherein the Hon'ble Supreme Court has approved the need of locus standi in proceedings before the Regulatory Commissions and held that the Petitioner –(Gajendra Haldea) had no locus standi to file and maintain the petition before the Central Electricity Regulatory Commission:-

"16.It is unnecessary to go into the question as to the nature of the transaction, because respondent No.1-Gajendra Haldea in order to prove that he had locus standi relied on Sections 121 and 142 of the Act. It was also stated that it is not in the nature of PIL. It was stated that the prayer for refund was not being pressed.

17. A bare reading of Sections 121 and 142 of the Act which read as follows shows that those provisions are not applicable.

"121. Power of Appellate Tribunal- The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory function under this Act.

"142. Punishment for non-compliance of directions by Appropriate Commission.-In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

17. Therefore, the Appellate Tribunal was wrong in interfering with the conclusions of CERC that respondent No.1's petition was not entertainable and/or maintainable."

5.8 This Tribunal in its order dated 10.03.2014 passed in IA No.7 of 2014 in DFR No.2675 of 2013 and IA No.8 of 2014 in DFR No.2676 in the case of Pushpendra Surana Vs. Central Electricity Regulatory Commission, & Ors. at Para 16 onwards has been pleased to hold as under:-

"16. In term of the aforesaid propositions, in order for the Appellant to be a 'person aggrieved", the Appellant should have:

- (a) Suffered a legal grievance;*
- (b) Suffered a legal injury; or*
- (c) Been deprived of something it was entitled to;*

17. The above principles have to be borne while deciding the question

raised in the light of the facts of this case.

18. At this juncture, it shall be stated that the very same question had been raised in another matter before this Tribunal in IA No.392 batch of 2012 with similar facts in which, order has been passed by this Tribunal on 20.12.2012 in the case of Bharat Jhunjunwala vs Uttar Pradesh Electricity Regulatory Commission wherein we have decided that the party who is a mere member of the public cannot file an Appeal by seeking leave to file an Appeal claiming that the party has got the public interest in the absence of the ingredients to satisfy the definition of the term "consumer".

19. Let us quote those relevant paras of the Impugned Order in the above IA:

"6. According to Section 111 of the Electricity Act, only a person aggrieved by the order of the Appropriate Commission can prefer an Appeal before the Appellate Tribunal. The Applicant is not a consumer of the distribution licensees of Uttar Pradesh are the beneficiaries of the PPA with Alaknanda Hydro Power Co. Ltd.

7. According to the Ld. Counsel, the Applicant/Appellant is presently living somewhere in incognito and therefore the address of correspondence in the Appeal has been mentioned as his lawyer's chamber in Delhi High Court. Even if it is assumed that he is a resident of Uttrakhand, the PPA for purchase of power from Alaknanda Hydro Power Corporation has been entered into by UP Power Corporation for supply to the distribution licensees of Uttar Pradesh.

8. Admittedly the Applicant/Appellant has neither produced any material nor indicated in the Appeal Paper Book that he is a consumer of the distribution licensees in Uttar Pradesh. Therefore, he cannot be considered as a person aggrieved by

the impugned orders, so as to challenge the same under Section 111 of the Act.

9. When we sought clarifications on this issue, the Ld. Counsel for the Applicant said that this Appeal has been filed as Public Interest Litigation. We do not find any provision in the Electricity Act for filing PIL against the orders of the State Commission. In view of above, we are unable to entertain the above IAs and the Appeal. Thus, the Application Nos. 392, 393, 394 and 399 of 2012 in DFR No. 1844 of 2012 are dismissed. Consequently, the Appeal is also rejected”.

20. This Order passed by this Tribunal has been affirmed by the Hon’ble Supreme Court in Civil Appeal No.7303-7304 of 2013 by the Order dated 19.8.2013. The relevant portion of the Order is as follows: “Since the Public Interest Litigation was not maintainable before the U.P. Electricity Regulatory Commission, we find no reason to entertain these Appeals, which are, accordingly, dismissed”.

21. In the light of the settled law laid down by this Tribunal as well as Hon’ble Supreme Court, we are constrained to consider the validity of the objections raised by the Applicant regarding locus-standi of the Applicant seeking leave to Appeal in the present case in the light of the facts of this case.

22. Even according to the Applicant, the Applicant is the resident of Ghaziabad (UP). The Applicant is neither a consumer of any of the procurers, the Respondents, in terms of Section 2 (15) of the Electricity Act, nor he is receiving supply of electricity from the Respondents through any of the procurers. Therefore, it cannot be said that the Applicant is an aggrieved person who has suffered any legal grievance or injury.”

5.9 It is, further, submitted that before the State Commission it was the stand of the Appellant that the impugned petition u/sec 142 and 146 was filed in larger public interest as non compliance of REC Regulations violates the right of the common man to live with healthy life which include right to live in pollution free environment guaranteed under Article 21 of the Constitution of India, therefore it is submitted that present proceeding is in the nature of Public Interest Litigation and hence is not maintainable before the State Commission. {Pushendra Surana vs Central Electricity Regulatory Commission, 2014 ELR (APTEL) 820} {Bharat Jhunjhunwala vs. UP Electricity Regulatory Commission (Civil Appeal No. 7303-7304 of 2013)}. Therefore, the Appellant has not suffered any legal grievance or injury as it has no generating station in the State of Chhattisgarh, despite opportunities granted, the Appellant has failed to establish its *locus standi* before the State Commission and hence the Commission has to dismiss the petition filed by the Appellant.

6. The replies/submissions filed by learned counsel, Mr. Pradeep Misra, appearing for the Respondent No.2/CSPDCL, are as under:

6.1 The instant appeal, being Appeal No. 65 of 2017, has been filed by the Appellant against the Order dated 16.06.2016 passed by the State Commission/CSERC in Suo-Motu Petition No. 41 of 2015 whereby the

State Commission has allowed carry forward RPO obligation to be met by the replying Respondent/CSPDCL for the year 2013-14.

6.2 The State Commission has framed Chhattisgarh State Electricity Regulatory Commission (Renewable Purchase Obligation and REC Framework Implementation) Regulations, 2013 dated 18.09.2013 which came into force w.e.f. 01.04.2013 as per Regulation 1.3 and were applicable for the period from 2013 to 2016. Under Clause 2(XIII), obligated entity has been defined which includes a distribution licensee. The Respondent No.2/CSPDCL could not achieve the RPO obligations due to reasons beyond its control hence, it has submitted the reasons before the State Commission that it is incurring losses therefore they should be exempted from the balance RPO obligation for the said year. On the basis of their reply filed by Respondent No.2, the State Commission has exercised its power to carry forward the RPO obligation for next 12 months and directed that it will meet the remaining RPO obligation in the next year.

6.3 None of the members indicated in Annexure-A-2 of the appeal has any power plant located in the State of Chhattisgarh, hence, the Appellant has no locus standi to file and maintain the appeal and on the basis of reply filed by the replying Respondent, the State Commission has exercised its powers to carry forward the RPO obligation for next 12 months and if the Appellant was aggrieved by the impugned Order, it ought

to have filed appeals against all the State Commissions where RPO obligation has been carry forward. Thus, the Appellant cannot be aggrieved by the discretion exercised by the State Commission and the present appeal is not maintainable.

6.4 It is stipulated in the Clause 6.4(1) of the Tariff Policy that purchase of energy from renewable energy sources will be considered by the Commission taking into account its availability and also its impact on the retail tariff. The State Commission may allow carry forward RPO despite availability of REC in market. While doing this, a Commission keeps in the mind the difficulty being faced by a licensee in compliance of RPO, impact on retail tariff etc. A Commission is a repository of the Consumers of the State, hence, it may give full opportunity to a licensee to comply its Regulations so that retail customers are not badly affected or not at all affect. Hence, a Commission has inherent power by virtue of either specific RPO Regulations or Regulations regarding business conduct rules to either, modify, after or carry over in the larger interest of consumer of the State. The State Commissions are responsible for promotion of renewable energy within the State and not outside the State. Promotion of REC certificates are not the primary function of a State Commission. No member of the Appellant Association has established any power plant in the State of Chhattisgarh, so mere selling REC certificates they cannot

claim locus standi. The State Commissions are responsible for stake holders within the State and not outside the State. Further, the REC certificates are being sold universally; hence, the Appellant Association cannot claim that REC certificates available in the market belongs to them only and claiming them aggrieved by the impugned order. The Appellant cannot generalize the practices being followed in other States by their respective Regulatory Commissions and even the other States or State Regulatory Commissions are not parties in the present appeal. Every State has different circumstances and need of the State is also different. Accordingly, the State Electricity Regulatory Commissions frame Regulations for the State. They have the inherent power to relax the Regulations so framed. Hence, what other State is doing, cannot be a ground to file an appeal against the impugned order of the Chhattisgarh State Commission.

6.5 Further, the matter of RPO compliance for FY 2014-15 is still sub-judice before the State Commission, hence, the same cannot be the ground for filing this appeal and the same is not maintainable.

6.6 In view of the aforesaid facts and circumstances of the matter, appeals filed by the Appellant are liable to be rejected.

7. Written submissions filed by learned counsel, Ms. Divya Chaturvedi, appearing for the Respondent No.4/Jindal Steel & Power Ltd., are as under:

On the issue of Locus Standi of the Appellant:

7.1 The primary issue to be determined by this Tribunal in the present appeal is whether the Appellant has locus standi to maintain the present proceedings before this Tribunal. The Appellant had approached Respondent No.1/State Commission for rectification of non-compliance by the Respondent distribution licensees within the State of Chhattisgarh of their solar Renewable Purchase Obligations (RPO) for the financial years 2013-14 and 2014-15.

7.2 It is an admitted fact that the Appellant is an association of companies engaged in generation of electricity through non-conventional sources and its members have subscribed to the Renewable Energy Certificate (REC) mechanism. It is equally undisputed that the Appellant association is registered in Mumbai, Maharashtra and none of its members are engaged in the generation of electricity in the State of Chhattisgarh. Therefore, the Respondent No.1/State Commission has rightly dismissed the petition of the Appellant on the ground of lack of locus standi of the Appellant to institute proceedings before it.

7.3 It is submitted that the judgments of this Tribunal in *South India Sugar Mills Association vs. Karnataka Power Transmission Corporation Ltd. 2011*

ELR (APTEL)1086; Indian Wind Energy Association vs. Gujarat Electricity Regulatory Commission 2014 ELR (APTEL) 897 and Indian Wind Energy Association & Anr. vs. Andhra Pradesh Electricity Regulatory Commission & Ors. in O.P. N.1 of 2013 decided on 20.04.2015 have been erroneously relied upon by the Appellant in support of its locus standi to maintain the present proceedings. It is pertinent to note that this Tribunal, in each of the decisions cited above, has noted that the concerned associations were both registered in the concerned State and had members who were generators operating in the said State. This Tribunal has, therefore, laid emphasis on the fact that a strong nexus with the concerned State is an important factor for determination of jurisdiction of the concerned State Commission. The Appellant in the instant case has failed to establish its presence or that of its members in the State of Chhattisgarh in spite of repeated opportunities to do so being granted by the State Commission. In fact, the Appellant has admitted that it has no nexus to the State of Chhattisgarh except for the fact that its members subscribe to the REC mechanism and may benefit under the CSERC (Renewable Purchase Obligations and REC Framework Implementation) Regulation, 2013.

7.4 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 suffered no legal injury. As admitted by the Appellant in its letter dated 09.07.2015 to the State Commission, REC is only one of the valid methods for compliance with

its RPO. Obligated entities are not bound to purchase RECs for fulfillment of RPO but merely have the option to purchase RECs in place of the renewable energy itself. Further, several renewable energy generators apart from the members of the Appellant are participants in the REC mechanism and there is no obligation on Respondent No.4 to purchase RECs only from the Appellant's members. It is thus clear that the Appellant had approached the State Commission merely on the basis of a possible financial gain for its members and not for the redressal of any legal injury caused to such members. The Hon'ble Supreme Court has held in *Grid Corporation of Orissa Ltd. v Gajendra Haldea & Ors.* [(2008) 13 SCC 414]; *Thamanna vs. K. Veera Reddy and Ors.*, (1980) 4 SCC 62 and *Gopabandhu Biswal vs Krishna Chandra Mohanty*, (1998) 4 SCC 447 that there should be an actual legal injury and only persons directly affected can be considered to be aggrieved. The mere deprivation of a chance of a future benefit is insufficient for conferment of locus standi. The Appellant, having failed to show a definite legal injury, did not have the locus standi to approach the State Commission and also does not have locus standi to maintain the present Appeal.

7.5 It is also submitted that the present proceedings are in the nature of public interest litigation (PIL) veiled as a complaint under Section 142 of the Electricity Act. The Appellant has relied upon the usage of the term "any person" in Section 142 of the Electricity Act to establish locus standi. However,

Section 142 cannot be read so broadly as to grant locus standi to any party regardless of whether it is aggrieved as this would amount to conferment of PIL jurisdiction upon the concerned Commission. It has repeatedly been held by this Tribunal that State Electricity Regulatory Commissions lack the jurisdiction to adjudicate upon matters in the nature of PIL. In this respect, reliance is placed upon the judgments of this Tribunal in *Pushpendra Surana vs. Central Electricity Regulatory Commission, 2004 ELR (APTEL) 820*; *Shri Bharat Jhunjunwala vs. Uttar Pradesh Electricity Regulatory Commission in I.A. Nos. 392, 393, 394 and 399 of 2012 in D.F.R. No. 1844 of 2012 decided on 20.12.2012*; and *Torrent Power Ltd vs. Uttar Pradesh Electricity Regulatory Commission in Appeal No. 188 of 2015 decided on 28.07.2016*.

7.6 In the light of the above, it is submitted that the present Appeal is not maintainable and This Tribunal should dismiss the instant Appeal.

On the issue of compliance of Renewable Purchase Obligation:

7.7 In the present appeal, the primary issue to be determined by this Tribunal is whether the Appellant had locus standi to maintain its petition before Respondent No.1/State Commission for enforcing the compliance of RPO for FY 2013-14 and 2014-15 of the Respondents, which are distribution licensees within the State of Chhattisgarh. The State Commission had dismissed the said petition of the Appellant as none of the

members belonging to the Appellant, which is an association, were present in the State of Chhattisgarh. Thus, the main issue before this Tribunal is the locus standi of the Appellant to initiate proceedings before the State Commission and the present appeal arising out of dismissal of the said petition. Further, the Appellant, in the present Appeal, has also alleged non-compliance of RPO for the FYs 2013-14 and 2014-15 by the Respondent Distribution Licensees, including the distribution business of Respondent No.4/Jindal Steel & Power Ltd.

7.8 The following submissions inter-alia have been made by Respondent No.4 herein on the issue of maintainability of the present appeal

- (a) The Appellant, has failed to establish any presence in the State of Chhattisgarh;
- (b) The Appellant is not a 'person aggrieved' in terms of Section 111 of the Electricity Act, 2003 as it has not suffered any legal injury; and
- (c) The present appeal is in the nature of Public Interest Litigation.

7.9 Regarding the allegation of non-compliance of its RPO targets in the FYs 2013-14 and 2014-15, Respondent No.4 herein is desirous of making the following submissions:

- (a) It is to be noted that Respondent No.4 has already complied with the RPO targets for the FY 2013-14. Accordingly, Respondent

No.4 had purchased 40962 non-solar and 3562 solar Renewable Energy Certificates. Certificates of purchases in respect of the same have duly been issued by Power Exchange India Ltd on 25.03.2015.

- (b) With respect to the FY 2014-15, Respondent No.4 was served with a Notice dated 24.02.2016 in Suo-Motu Petition No. 10 of 2016 by the State Commission regarding its RPO compliance. In response, Respondent No.4, by way of its reply dated 04.08.2016, had sought an extension till 31.03.2017 to carry out its RPO compliance for FY 2014-15 on account of financial constraints. Respondent No.4 had been facing a lack of cash-flow as it was procuring power from Jindal Power Ltd., at the rate of Rs.3 per KWh till 31.03.2016 whereas since January, 2015, it was directed to recover tariff of only Rs. 2.50 per KWh from its consumers of O.P. Jindal Industrial Park. The matter is now coming up for hearing on 13.04.2017 before the State Commission.
- (c) Accordingly, Respondent No.4 undertakes to fulfill the RPO target for its distribution business for the FYs 2014-15 by 30.03.2017. Respondent No.4 further craves leave to file proof of RPO compliance for the FY 2014-15 at a later time, if required.

7.10 Thus, it is clear that Respondent No.4 has already complied with the RPO targets for its distribution business for FY 2013-14 and is taking necessary steps to ensure compliance for the FY 2014-15. In the light of the foregoing, the averments made by the Appellant qua JSPL-D in the present Appeal may be dismissed by this Tribunal.

8. We have heard learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondents at considerable length of time and gone through the written submissions carefully and after thorough critical evaluation of the relevant material available on records, the main issues that arise for our consideration in these two appeals are as follows:

Issue No.1: *Whether the State Commission has correctly decided that since none of the members of the Appellant association have plants operating in the State of Chhattisgarh, they are not within its jurisdiction and have no locus standi to maintain its Petition No. 44 of 2015(M)?*

[Appeal No. 106 of 2016]

Issue No.2: *Whether State Commissions was justified in permitting carry forward of RPO despite availability of RECs in the market?*

[Appeal No. 65 of 2017]

9. Our Consideration & Findings:-

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

9.1 Learned counsel for the Appellant submitted that the Appellant is a registered Association of companies engaged in the business of Renewable Energy (RE) and the major focus of the members of the Appellant Association is on developing and installing Solar power plants under various policies of Centre, State and under REC mechanism in India. He, further, submitted that vide impugned order dated 21.12.2015, the State Commission has dismissed the petition of the Appellant at the time of admission itself on the grounds that the Appellant did not have the requisite locus standi to prefer the petition before the State Commission as the Appellant did not have any members in the State of Chhattisgarh.

9.2 Learned counsel alleged that the State Commission did not provide any reasoning substantiating why having members in the state would give the Appellant locus standi to maintain the petition before the State Commission. In fact, the State Commission has failed to appreciate that the Appellant being a registered association of renewable energy developers under the REC mechanism is directly interested in RPO compliance of Respondents Discoms as every generator under the REC

mechanism gets affected and aggrieved by continuous failure of the obligated entity to fulfill their respective RPOs.

9.3 Learned counsel, further, submitted that the entire scheme of RECs envisages the certificates to be sold inter-state to address mismatch of distribution of renewable sources and, as such, the State Commission ought not to have restricted the Appellant for representing their case regarding non-compliance of RPO in the State of Chhattisgarh. To substantiate his submissions, learned counsel placed reliance on the judgment of this Tribunal dated 16.04.2015, in Appeal No. 258 of 2013, *Indian Wind Power Association v. GERC and Ors.*, in which this Tribunal has reiterated the pan-India nature of the REC mechanism which was evolved to exploit the renewable energy sources in States having abundant potential of renewable energy for the benefit of States which do not have adequate potential of renewable energy sources. In fact, the whole idea of renewable energy mechanism and RPO has been conceptualize to accelerate the development of renewable energy potential of the resource rich States thus serving the object of the Electricity Act 2003.

9.4 Learned counsel was quick to submit that in a host of judgments, this Tribunal has held that registered associations having clearly identifiable members have the locus to prefer an appeal and petition

under Section 111 and 121 of the Electricity Act 2003. This Tribunal through these judgments has also ruled that such appeals/petitions filed by registered associations having clearly identifiable members are maintainable.

9.5 Learned counsel vehemently submitted that in OP No. 4 of 2016 wherein power producer association was seeking enforcement of RPO compliance by all the 26 State Electricity Regulatory Commissions (“SERCs”) and this Tribunal upheld that the petitioner has the locus to seek relief against every state commission in the country asking them to enforce the RPO compliance of the obligated entities located in the state. Learned counsel contended that in view of the judgment of this Tribunal it can be concluded that geographical location of the renewable energy generator is not a consideration to seek remedy from the State Electricity Regulatory Commission.

9.6 Learned counsel, further, contended that as per CSERC RPO Regulations which are based on the CERC Regulations and direct obligated entities to procure REC in accordance with the provisions of CERC Regulations and nowhere it has been stipulated that the obligated entities can procure RECs only from those renewable energy generators located within the State of Chhattisgarh. In fact, Regulation 4.5 clearly states that non-availability of renewable sources in the area of distribution

licensee will not be accepted as a ground for exemption from RPO or for curtailing the RPO targets. Learned counsel emphasis that from such provisions, it can be concluded that the CSERC RPO Regulations do not recognize any geographical limitation for RPO compliance.

9.7 Learned counsel, further, submitted that the Appellant is mainly aggrieved by the act that the RPO compliance by the distribution licensees in the State of Chhattisgarh has been dismal during the years 2011, 2012, 2013 and 2014. Learned counsel pointed out that as a result of non-compliance of RPO by the obligated entities in the State results into large unsold inventory of RECs which in turn adversely affect the REC market. Learned counsel was quick to point out that the State Commission has necessary jurisdiction under Section 86(1)(e), 142 of the Electricity Act, 2003 and Regulation 9 of the Conduct of Business Regulations to adjudicate the issue of RPO non-compliance but, the State Commission without giving proper reasoning has dismissed the Petition filed before it by the Appellant. Learned counsel has made reference to section 142 to mean that any “any person” can file a complaint before the State Commission to bring to its attention the contravention made by any entity of the provisions of Electricity Act 2003 or the rules or regulations, etc.

9.8 Learned counsel, further, contended that the distribution licensee can procure power from the generating stations located outside the State but any dispute arising between the generator and distribution licensee is adjudicated by the State Commission under Section 86 (1)(f). The principle that location of the selling party is irrelevant as has been upheld by this Tribunal in *Lanco Kondapalli Power Private Limited v. Haryana Electricity Regulatory Commission*, Appeal No.156 of 2011. Learned counsel, further, relied on the judgment of the Hon'ble Supreme Court in the case of *Indian Performing Rights Society Ltd. v. Sanjay Dalia and Anr.*, Civil Appeal No. 10643-10644 of 2010 and also in *Dhodha House v. S.K. Maingi* (2006) 9 SCC 41 wherein it has been held that the jurisdiction is conferred upon the Court where the cause of action arise.

9.9 Learned counsel, in response to the arguments raised by the Respondents that such petitions are in the nature of Public Interest Litigation (PIL), clarified that the concept of PIL and the petition of the Appellant are clearly distinguishable as the Appellant has filed a complaint under Section 142 of the Act and the State Commission has the jurisdiction to punish the defaulting agency for non-compliance of its own regulations.

9.10 Learned counsel for the Appellant contested that the judgment of the Hon'ble Apex Court in *GRIDCO vs Gajendra Haldea* case is not

applicable in the present case as the question before the Hon'ble Apex Court was contractual in nature arising out of a PPA wherein the claimant was not a party and others had no locus.

9.11 Learned counsel, further, contended that the Hon'ble Supreme Court in catena of judgments has held that for the Appellant to be an "aggrieved person", the Appellant should have suffered a legal injury, legal grievance or been deprived of something it was entitled to. In the instant matter the members of the Appellant association being RE generators under the REC mechanism had the legitimate expectation that the State Commission will enforce its own RPO Regulations but, the same has not happened and thus the Appellant is an aggrieved person.

9.12 Learned counsel highlighted that Appeal No. 65 of 2017, has been filed by the Appellant to salvage the Renewable Energy Certificate (REC) mechanism and in turn to save the business of the R.E. Developers across the nation, including the State of Chhattisgarh. He, further, submitted that the REC market is already struggling to stay afloat and such decisions will cumulatively obliterate the demand for RECs.

9.13 Learned counsel, while summing up his submissions, reiterated that the Appellant is, therefore, having locus-standi and the appeal filed by the Appellant deserves to be allowed and the impugned Order is liable to be set aside.

9.14 *Per-contra*, learned counsel for the State Commission submitted that the State Regulatory Commission has been constituted for the purpose of discharging functions with respect to a particular state. He, further, submitted that admittedly the Appellant/Green Energy Association is an Association of Generators who have no generating station in the State of Chhattisgarh and, in fact, it has no members in the State of Chhattisgarh as such, the Appellant has no locus-standi to file a petition under Section 142 & 146 of the Electricity Act, 2003.

9.15 Learned counsel vehemently submitted that before passing the impugned order, the State Commission has given adequate opportunity to the Appellant to satisfy the Commission on the issue of locus standi. He pointed out that the judgments relied by the Appellant are not applicable to the facts of the present case, as in those cases there are specific finding to the effect that concerned associations were registered in the concerned State and had members who had established generating plants in that State whereas in the present case admittedly the Appellant Association is registered in Maharashtra and has no member from the State of Chhattisgarh.

9.16 Learned counsel was quick to submit that on the issue of locus-standi, the State Commission relied on the judgment dated 13.08.2008 of the Hon'ble Supreme Court in Grid Corporation of Orissa Ltd. vs Gajendra

Haldea & Ors. wherein the Hon'ble Apex Court has approved the need of locus standi in proceedings before the Regulatory Commissions and held that the Petitioner—(Gajendra Haldea) had no locus standi to file and maintain the petition before the Central Electricity Regulatory Commission.

9.17 Learned counsel for the State Commission, further, submitted that before the State Commission it was the stand of the Appellant that the impugned petition under Sections 142 & 146 was filed in larger public interest as non compliance of REC Regulations violates the right of the common man to live with healthy life which include right to live in pollution free environment guaranteed under Article 21 of the Constitution of India, therefore, it may be concluded that the present proceeding is in the nature of Public Interest Litigation (PIL) and, hence, is not maintainable before the State Commission. Before declaring the petition of the Appellant as non-maintainable, the State Commission referred to the number of judgments of this Tribunal as well as of the Hon'ble Apex Court to establish that the Appellant has not suffered any legal grievance or injury as it has no generating station in the State of Chhattisgarh. Learned counsel was quick to submit that despite opportunities granted, the Appellant has failed to establish its *locus standi* before the State Commission and, hence, the Commission had no option but to dismiss the petition filed by the Appellant.

9.18 Learned counsel appearing for the Respondent No.2/CSPDCL submitted that CSPDCL could not achieve the RPO obligations due to reasons beyond its control hence, it was submitted before the State Commission to exempt them from the balance RPO obligation of the said year in view of the financial losses and after due analysis of the detailed reply submitted by Respondent No.2, the State Commission has exercised its power to carry forward the RPO obligation for next 12 months and directed that it will meet the remaining RPO obligation in the next year.

9.19 Learned counsel was quick to point out that none of the members indicated in Annexure-A2 of the appeal has any power plant located in the State of Chhattisgarh, hence, the Appellant has no locus standi to file and maintain the appeal.

9.20 Learned counsel, further, contended that as stipulated in the Clause 6.4(1) of the Tariff Policy that purchase of energy from renewable energy sources will be considered by the Commission taking into account its availability and also its impact on the retail tariff. Learned counsel emphasized that while deciding the matter relating to RPO, the State Commission keeps in mind the difficulty being faced by a licensee in compliance of RPO, impact on retail tariff, availability of RECs in the market etc. Based on these facts, the State Commission decides extension of RPO

in a particular year and based on its due diligence, it may allow carrying forward the balance RPO in the next time frame as the case may be.

9.21 Learned counsel submitted that the State Commissions are responsible for promotion of renewable energy within the State and not outside the State. Promotion of RECs is not primary function of the State Commission. Admittedly, no member of the Appellant Association has established any power plant in the State of Chhattisgarh, so mere selling RE certificates they cannot claim locus standi. In fact, the State Commissions are responsible for stake holders within the State and not outside the State.

9.22 Learned counsel, further, contended that RECs are being sold universally across the country; hence, the Appellant Association cannot claim that RECs available in the market belongs to them only and thus, aggrieved by the impugned order. Moreover, the Appellant cannot generalize the practices being followed in other States by their respective Regulatory Commissions and even the other States or State Regulatory Commissions are not parties in the present appeal. Accordingly, learned counsel summed up his submission that what other State is doing, cannot be a ground to file an appeal against the impugned order of the Chhattisgarh State Commission. Further, the matter of RPO compliance for FY 2014-15 is still sub-judice before the State Commission, hence, the same cannot be

the ground for filing this appeal and, therefore, the State Commission has rightly declared the petition is not maintainable.

9.23 Learned counsel for Respondent No.4/Jindal Steel & Power Ltd. submitted that admittedly the Appellant is an association of companies engaged in generation of electricity through non-conventional sources and its members have subscribed to the Renewable Energy Certificate (REC) mechanism. However, it is equally undisputed that the Appellant association is registered in Mumbai, Maharashtra and none of its members are engaged in the generation of electricity in the State of Chhattisgarh. Due to the fact that Therefore, the Respondent Commission has rightly dismissed the petition of the Appellant on the ground of lack of locus standi of the Appellant to institute proceedings before it.

9.24 Learned counsel was quick to submit that various judgments of this Tribunal have been erroneously relied upon by the Appellant in support of locus-standi to maintain the present proceedings.

9.25 Learned counsel pointed out that this Tribunal, in each of the decisions so referred by the Appellant, has noted that the concerned associations were both registered in the concerned State and had members who were generators operating in the said State. Thus, it transpired from the various judgments of this Tribunal is that there has to be a strong nexus

with the concerned State for determination of jurisdiction of the concerned State Commission.

9.26 Learned counsel, further, submitted that in the instant case, the Appellant has failed to establish its presence or that of its members in the State of Chhattisgarh inspite of repeated opportunities granted by the Respondent Commission.

9.27 Learned counsel 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 suffered no legal injury. Learned counsel emphasized that several renewable energy generators apart from the members of the Appellant association are participants in the REC mechanism and there is no obligation on the part of the obligated entities of Chhattisgarh State including Respondent No.4 to purchase RECs only from the Appellant’s members. It is, thus, clear that the Appellant approached the State Commission merely on the basis of a possible financial gain for its members and not for the redressal of any legal injury caused to its members.

9.28 Learned counsel, to substantiate her submissions, relied upon the judgments of the Hon’ble Supreme Court in the case of *Grid Corporation of Orissa Ltd. v Gajendra Haldea & Ors.* [(2008) 13 SCC 414]; *Thamanna vs. K. Veera Reddy and Ors.*, (1980) 4 SCC 62 and *Gopabandhu Biswal vs*

Krishna Chandra Mohanty, (1998) 4 SCC 447 wherein Hon'ble Supreme Court held that there should be an actual legal injury and only persons directly affected can be considered to be aggrieved. As in the instant case, mere deprivation of a chance of a future benefit is not sufficient for conferment of locus standi.

9.29 Learned counsel, further, contended that the present appeal is in the nature of Public Interest Litigation (PIL) veiled as a complaint under Section 142 of the Electricity Act and as per the settled Principle of Law, the State Regulatory Commission have no jurisdiction to adjudicate upon matters in the nature of PIL. Learned counsel, in this regard, placed reliance upon the judgments of this Tribunal in *Pushpendra Surana vs. Central Electricity Regulatory Commission, 2004 ELR (APTEL) 820; Shri Bharat Jhunjunwala vs. Uttar Pradesh Electricity Regulatory Commission in I.A. Nos. 392, 393, 394 and 399 of 2012 in D.F.R. No. 1844 of 2012 decided on 20.12.2012;* and *Torrent Power Ltd vs. Uttar Pradesh Electricity Regulatory Commission in Appeal No. 188 of 2015 decided on 28.07.2016.*

9.30 While summing up her arguments, learned counsel for the Respondent No.4 reiterated that the present appeal is not maintainable and this Tribunal should dismiss the same.

9.31 Learned counsel for the Respondent No.4, further, submitted that the Appellant in the appeal No. 65 of 2017 has also alleged non-compliance of

RPO for the Financial Years 2013-14 & 2014-15 by the distribution licensees including the fourth Respondent. In this regard, learned counsel submitted that the Respondent No.4 has already complied with the RPO targets for the Financial Year 2013-14 and with respect to Financial Year 2014-15, Respondent No.4 has sought an extension till 31.03.2017 to carry out its RPO compliance. The matter is already under consideration of the Regulatory Commission and, accordingly, there is no merit in the contention of the Appellant brought out in the instant appeal.

Our Findings:

9.32 We have critically analyzed rival contentions of learned counsel for the Appellant and learned counsel for Respondents in both the appeals and also taken note of the various judgments of the Hon'ble Supreme Court as well as this Tribunal in regard to the maintainability of appeal, in such a scenario, when the appeal has been preferred by an Association of renewable energy generators and not by an individual generator being aggrieved on account of financial/legal injuries caused by the order/judgment.

9.33 It is not in dispute that as per National Electricity/Tariff Policy, the State Regulatory Commissions have been mandated to enforce RPO obligations in the respective States by the obligated entities. Admittedly, in the present case, the Appellant is contesting on the fact that in the State of Chhattisgarh, during the years 2011, 2012, 2013 and 2014, the RPO

compliance has not been achieved to the desired targets and the State Commission has allowed the obligated entities to carry forward the target in the subsequent years. The Appellant is mainly aggrieved that without providing any reasoning, his petition was held non-maintainable by the State Commission primarily on the issue of locus-standi.

9.34 Learned counsel for the Appellant has repeatedly contended that it is a fact that none of its Members is located in the State of Chhattisgarh but the entire scheme of RECs mechanism envisages the certificates to be sold across the States in the country to address mismatch of distribution of renewable sources. The Appellant, accordingly, alleges that his petition cannot be held as non-maintainable because of the fact that his Association is registered in Mumbai having no Member from the State of Chhattisgarh. To substantiate his contention, learned counsel for the Appellant has relied upon a number of judgments of the Hon'ble Apex Court as well as this Tribunal to contest that such requirement of presence of the Appellant in the host State is not at all essential to present a petition or appeal before the State Commission or any Court. The Appellant, further, contended that in the instant case, the Members of the Appellant association had the legitimate expectation that the State Commission will enforce its RPO Regulations but failed to do so and, thus, causing financial loss to the

business of renewable energy developers across the country including the State of Chhattisgarh.

9.35 In view of these facts, learned counsel for the Appellant submitted that the Appellant is, accordingly, an aggrieved person who suffered legal injury on account of being deprived of something for which it was entitled to. The Appellant, therefore, reiterated that it has locus standi to prefer the petition/appeal which deserves to be allowed.

9.36 On the other hand, learned counsel for Respondents vehemently submitted that the Appellant, being Energy Association, is an association of generators, who have no generating station or Members in the State of Chhattisgarh and, as such, it lacks locus standi to file petition under Section 142 & 146 of the Electricity Act. Further, the State Commission, before passing the impugned Order, had given sufficient opportunities to the Appellant to satisfy the Commission on the issue of locus standi but the Appellant failed to do so. Respondents cited the judgment of the Hon'ble Apex Court in GRIDCO v Gajedra Haldea & Ors wherein it has been held that a person, who has not suffered any legal injury, has no locus standi to file and maintain the petition before the Central Electricity Regulatory Commission.

9.37 Learned counsel for the Respondents also pointed out that impugned petition of the Appellant under Sections 142 & 146 was filed in larger public

interest regarding right of the common man to live with healthy life in a pollution free environment guaranteed under Article 21 of the Constitution of India, therefore, the petition filed by the Appellant tantamounts to PIL hence, found non-maintainable by the State Commission.

9.38 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.

9.39 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.

9.40 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.

9.41 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.

9.42 In view of the first Appeal (No. 106 of 2016) being dismissed, the other Appeal (No. 65 of 2017) does not survive for consideration on merits.

ORDER

For the forgoing reasons, as stated supra, we are of the considered opinion that the instant Appeal, being Appeal No. 106 of 2016 filed by the Appellant/ M/s Green Energy Association is non-maintainable and, hence, dismissed. In view of the dismissal of the above appeal, Appeal No. 65 of 2017 filed by the Appellant does not survive for further consideration and, hence, disposed of accordingly.

The impugned Orders dated 21.12.2015 in Petition No. 44 of 2015(M) and dated 16.06.2016 in Suo-Motu Petition No. 41 of 2015(M) passed by the Chhattisgarh State Electricity Regulatory Commission are hereby upheld.

No order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 21ST DAY OF AUGUST, 2019.

**(S.D. Dubey)
Technical Member**

**(Justice Manjula Chellur)
Chairperson**

REPORTABLE / NON-REPORTABLE

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