



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

:Present:

Justice C.V. Nagarjuna Reddy, Chairman
Sri Thakur Rama Singh, Member
Sri P.V.R.Reddy, Member

O.P.No.56 of 2023

Between:

M/s. BIOP Steels & Power Pvt Ltd., (Captive power plant),
Sy.No.124 A,B,C, 133 to 141, 143 & 144, Obulapuram (V),
D'Hirehal (M), Anantapur District. (AP) - 515865
E-mail: biopsteels@rediffmail.com

.... Petitioner

And

A.P. State Load Despatch Centre,Vidyuth Soudha,
Gunadala, Vijayawada. Rep.by its Chief Engineer/SLDC,
APTRANSCO.

....Respondent

This Original Petition has come up for hearing before us today in the presence of Sri Deepak Chowdary, representing Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondent; that after carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

ORDER

This Original Petition is filed for exempting the petitioner from Renewable Power Purchase Obligation (RPPO) under Regulation 1 of 2012,

Regulation No.2 of 2017 and Regulation No.5 of 2022 for the FY 2016-17 to FY 2023-24 and for the future Financial Years in view of its consumption of power from its co-generation WHRS unit through waste heat received from flue gases from the date of commissioning of the WHRS plant i.e., 08-10-2015.

We have heard Sri Deepak Chowdary, learned counsel for the petitioner, and Sri P.Shiva Rao, learned Standing counsel for the respondent.

At the hearing it is admitted that this Commission has passed several orders in the past holding that the power generated through WHRS process shall be exempted from RPPO. These orders were based on several APTEL Judgments viz., ***Judgment dated 26-4-2010 in Appeal No.57 of 2009 - Century Rayon Vs. Maharashtra Electricity Regulatory Commission and Others; Judgment dated 30-1-2013 in Appeal No.54 of 2012 - Emami Paper Mills Limited Vs. OERC and others; and Judgment dated 9-4-2019 in Appeal No.322 of 2016 and batch - Ultra Tech Cements Vs. Karnataka Electricity Regulatory Commission***, etc. By a detailed order dated ***07-9-2020 in OP No.11 of 2020 - Ultra Tech Cement Ltd., Vs. AP State Load Despatch Centre, Hyderabad*** - this Commission held as under:

"14. The position that emerges from the case law discussed above is that, Section 86(1)(e) of the Act is interpreted to the effect that irrespective of whether cogeneration sources are renewable sources or otherwise, under the statutory scheme, cogeneration sources shall be treated on par with renewable energy generation sources, that under the Act RPO cannot be fastened on energy generated through co-generation sources merely because renewable sources are not utilised in co-generation process and that irrespective of the fuel used (in Century Rayon, the APTEL has taken an extreme example of fossil fuel being

used as a co-generation source), the cogeneration captive plants are entitled to be exempt from compliance of RPPO.

15. One last question that remains to be dealt with, though it is not specifically argued by Mr. Siva Rao, but raised in the counter is, to what extent the Petitioner is entitled to the relief. In the counter the Respondent has drawn a distinction between exemption of energy produced by the captive plant from RPPO and claiming such energy for RPPO obligation to be required to be met from conventional energy... .. the order in EMAMI Paper Mills Ltd. Vs. OERC & Ors (Judgment dated 30.01.2013 in Appeal No. 54 of 2012) as extracted by APTEL in JSW case, and also in this order supra, throws a clear light on this aspect. In para 40(ii), it clearly laid down that the definition of obligated entity did not cover a case where a person is a consumer and is consuming power from a cogeneration plant. The APTEL also set aside the State Commissions' order holding that the obligation in respect of co-generation can be met from solar and non-solar sources but the solar and non-solar purchase obligation has to be met mandatorily by the obligated entities and consuming electricity only from co-generation sources shall not relieve any obligated entity. The APTEL clearly spelt out that when such relaxation has been made, the same relaxation must have been allowed in respect of consumers making electricity consumption from captive generation plant in excess of total RPPO obligations and that failure to do so would amount to violation under Section 86(1)(e) of the Act, which provides both cogeneration as well as generation of electricity from renewable source of energy must be encouraged as per the finding of the APTEL in Appeal No. 57 of 2009.

16. While the above discussed Judgment in Emami case is a complete answer to the question under discussion, this Commission also independently feels that confining the exemption only to captive units defies logic and reason. Once co-generation is treated on par with renewable energy and on that basis the captive plant is exempted from being an obligated entity, mulcting a consumer of that power with RPPO treating the same as conventional energy is wholly irrational and the same would defeat the legislative intent of treating energy from cogeneration on par with renewable energy. In light of preponderance of judicial opinion reflected in the weighty judgments of APTEL, as followed by this Commission at least in two cases, and the reasons assigned by us herein above, we hold that the power generated by the WHRS's plant and consumed by the Petitioner is eligible to set off against its RPO requirements towards the energy consumed from conventional sources."

In the light of the above and as there is no dispute that the prayer sought for in this OP is squarely covered by the above noted orders, the petitioner is entitled to grant of relief as prayed for.

The OP is, accordingly, allowed. No costs.

Sd/-
P.V.R. Reddy
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
Thakur Rama Singh
Member

