



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P.No.21 of 2014 & I.A.No.7 of 2014

Date: 23-05-2015

Present

Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

Rashtriya Ispat Nigam Ltd.

Registered address at Main Administrative Building

Visakhapatnam, Andhra Pradesh, PIN – 530 031

Rep. by Mr. M. Venkateswara Rao GM (Energy & Utilities) ... Petitioner

A N D

1. A.P. State Load Despatch Centre, Hyderabad
Rep. by Chief Engineer / SLDC, APTRANSCO
Vidyut Soudha, Hyderabad – 500 082
2. Eastern Power Distribution Company of AP Limited
Rep. by its Chief General Manager, Comml. & RA
Corporate Office P&T Colony, Seethammadhara
Visakhapatnam – 530 013 ... Respondents

This Petition has come up for hearing on 16-05-2015 in the presence of Sri V. Ravinder Rao, learned Counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents. 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

1. O.P.No.21 of 2014 is a petition to exempt the Visakhapatnam Steel Plant/a unit of the petitioner from the Renewable Power purchase Obligation for the financial years 2012-13 to 2016-17 and also for subsequent years in future.

2. I.A.No.7 of 2014 is an interlocutory application for grant of interim stay of operation of the letter of the 1st respondent dated 12-07-2013 directing the Visakhapatnam Steel Plant to furnish the Renewable Energy Certificates.

3. The petitioner states that this Commission made Renewable Power Purchase Obligation (Compliance By Purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2012 (Regulation 1 of 2012). The Chief General Manager (Commercial & RA), APEPDCL, Visakhapatnam by a letter dated 30-03-2013 requested the Visakhapatnam Steel Plant to furnish the Renewable Energy Certificates for the period specified in the letter to the Chief Engineer of the 1st respondent. The fulfillment of Renewable Power Purchase Obligation was requested to be submitted to the Nodal Agency on monthly basis in the prescribed proforma. The Visakhapatnam Steel Plant informed by a letter dated 17-04-2013 that it utilizes waste gases generated through various metallurgical processes as a fuel to the extent of about 50% of the total thermal load in the captive power plant No.1, which produces the steam required for various processes of the integrated steel plant and also the power. Thus, it is a co-generation unit as per Section 2 (12) of the Electricity Act, 2003 and as such, as observed by the Appellate Tribunal for Electricity in Appeal No.57 of 2009, the Visakhapatnam Steel Plant cannot be considered as an obligated entity under Regulation 1 of 2012; as otherwise the object of Section 86 (1) (e) of the Electricity Act, 2003 will be defeated. The Appellate Order is generic in nature applicable to all co-generation units using any fuel.

4. Still, the Visakhapatnam Steel Plant was again requested to submit the Renewable Energy Certificates by a letter dated 21-06-2013 for which, an identical

reply was given by a letter dated 29-06-2013. However, the 1st respondent informed by a letter dated 12-07-2013 that the 1st respondent was designated as State Agency to implement Renewable Power Purchase Obligation by this Commission without any power to exempt any obligated entity and hence, the Renewable Energy Certificates towards the captive consumption during financial year 2012-13 have to be furnished immediately. The Visakhapatnam Steel Plant, a unit of the petitioner is a public sector undertaking and company and the captive power generation from power plant No.1 etc., is being increased by adding captive power plant No.2 etc., and the details of the power generation capacity, use and consumption of power etc., are detailed in the petition and hence the request for the main and interim reliefs.

5. The respondents contested the request for the reliefs contending that under Regulation 1 of 2012, mandatory purchase of Renewable Energy at minimum 5% of their annual energy consumption is prescribed for the obligated entities including consumers owning a captive generating plant of 1 MW and the 1st respondent is designated as State Agency, who is responsible to submit the quarterly status on compliance of Renewable Power Purchase Obligation by the obligated entities to this Commission. The obligated entities are pursued through the concerned distribution companies to fulfill the obligation and the Visakhapatnam Steel Plant with a captive generating plant is an obligated entity under the Regulation. The 1st respondent is not vested with any power to exempt any obligated entity or directly act upon the findings of the Appellate Tribunal for Electricity to give exemption. The power plant of the petitioner has to be inspected to know whether it is a co-generation power plant or captive power plant to the tune of 300 MW (commissioned) or a part which is to be

considered for the purpose of any exemption from the Renewable Power Purchase Obligation. Hence, the respondents desired the petitions to be dismissed with costs.

6. The premises of the petitioner were accordingly informed to have been inspected by the officers of the 2nd respondent and copies of the inspection report have been furnished to the Commission and the learned counsel for the petitioner.

7. The arguments of Sri V. Ravinder Rao, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents are heard in detail with reference to the pleadings, documents and the inspection report on record and the learned counsel for the petitioner has placed before the Commission copies of four judgments of the Appellate Tribunal for Electricity relied on by him.

8. The point for consideration is whether the petitioner is entitled to be exempted from any Renewable Energy/Power Purchase Obligation under Regulation 1 of 2012 of this Commission?

9. The factual matrix is not in controversy and the Visakhapatnam Steel Plant, a unit of the petitioner has a captive power plant, which is a co-generating unit as per Section 2 (12) of the Electricity Act, 2003. The Inspection Report / Verification Report on the plant of the petitioner by three officers of the 2nd respondent headed by the Chief Engineer (FAC) shows that waste gases are being supplemented by coal firing in the co-generation process of the plant. The inspection team referred to the guidelines of the Ministry of New and Renewable Energy of the Government of India, which stated the waste heat recovery to be an energy conservation measure and cannot be treated as a non-conventional energy source of energy. The team, therefore, suggested that

the request for exemption has to be examined in view of the MNRE guidelines.

10. It is true that either respondent is not empowered by Regulation 1 of 2012 to exempt any obligated entity from the Renewable Power Purchase Obligation and it is also true that Regulation 1 of 2012 itself did not specifically contemplate any such exemption or any defined parameters for considering any exemption. However, Regulation 9 of Regulation 1 of 2012 provided that the Commission, suo-motu or on an application from any person generating electricity from renewable sources or an entity mandated under clause (e) of sub-section (1) of section 86 of the Act to fulfill the Renewable Power Purchase Obligation, may review, add, amend or alter these regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these regulations. Similarly, Regulation 10.1 of Regulation 1 of 2012 provided that nothing in these regulations shall be deemed to limit or otherwise affect the power of the Commission to make such orders as may be necessary to meet the ends of justice or to prevent abuse of process of the Commission. Similarly, variance in procedure while dealing with a matter or class of matters is permitted by Regulation 10.2 thereof, in view of the special circumstances, for reasons to be recorded in writing. Thus, these three provisions enable the Commission to consider the request for exemption by an obligated entity though such an exemption is not contemplated by the Regulation, if the facts and circumstances governing such request justify the same.

11. What all the 1st respondent stated in the Counter is that it is not vested with the power to exempt any obligated entity and cannot directly act upon the findings of the Appellate Tribunal for Electricity and not that the findings of the Appellate Tribunal for Electricity do not justify the request of the petitioner for exemption. The guidelines of

the Ministry of New and Renewable Energy only mention the waste heat recovery to be not a non-conventional energy source but the question here is not about the classification of waste heat recovery as a source of energy but about the co-generation plant, irrespective of the nature of the fuel used, exempting the energy user from the Renewable Power Purchase Obligation. In that view of the matter, any contradiction between the judgments of the Appellate Tribunal for Electricity and the guidelines issued by NEDCAP and MNRE also cannot be assumed as sought to be projected in the U.O. Note dated 25-03-2015 to the Chief General Manager, APEPDCL. The U.O. Note specifies that the petitioner is generating power in co-generation mode by combustion of low calorific combustible waste gases and conventional coal firing in the ratio of 50.63% and 49.37%. Section 2 clause 12 of the Electricity Act, 2003 defines co-generation as a process, which simultaneously produces two or more forms of useful energy (including electricity) and Section 86 (1) (e) makes it a function of the State Commission to promote co-generation ..., which is a subject of interpretation by the Appellate Tribunal for Electricity.

12. The Appellate Tribunal for Electricity in its judgment in Appeal No.57 of 2009 dated 26-04-2010 (Century Rayon case) after an exhaustive reference to the statutory provisions, National Policies and plans and case law, has concluded that Section 86 (1) (e) did not use the expression co-generation to mean co-generation from a renewable energy source alone and the meaning of the term co-generation has to be understood as defined in Section 2 (12) of the Act. It was held that irrespective of the nature of fuel used for such co-generation, co-generation was intended to be promoted and fastening of the obligation on the co-generator to procure electricity from renewable energy

sources would defeat the object of Section 86 (1) (e) of the Act. The interpretation was held by the tribunal to be equally applicable to all co-generation based captive consumers, who may be using any fuel, as the appeal was generic in nature. In Appeal No.54 of 2012 (Emami Paper Mills Ltd case) by judgment dated 30-01-2013, the Appellate Tribunal for Electricity reiterated that irrespective of the nature of the fuel used if co-generation is co-generation as defined in Section 2 (12), the co-generator cannot be compelled to purchase energy from a renewable source. In Appeal No.59 of 2012 (Vedanta Aluminium Ltd case) by a judgment dated 31-01-2013, the Appellate Tribunal for Electricity reiterated the principle and similar was the judgment of the Appellate Tribunal for Electricity in Appeal No.125 of 2012 dated 10-04-2013 (Hindalco Industries Limited case). In the later three judgments, the Appellate Tribunal for Electricity made it clear that all the State Commissions are bound by the law laid down in Century Rayon case. In the last judgment, the Appellate Tribunal also found fault with the regulation framed by the State Commissions involved therein to enforce Renewable Power Purchase Obligation on the captive consumers to meet a specific percentage of energy, though having a captive co-generation plant using any fuel.

13. While this Commission has to follow the principles laid down by the Appellate Tribunal for Electricity as a matter of judicial discipline and propriety, the petitioner has to be exempted from the Renewable Power Purchase Obligation in consonance with the findings of the Appellate Tribunal for Electricity in Century Rayon case, even in relaxation of Regulation 1 of 2012. While noting that any guidelines issued by NEDCAP stipulating sourcing any percentage of the total heat from any source do not run counter to the principle laid down by the Appellate Tribunal about the co-generation

being promotable, irrespective of the nature of the fuel used, the petitioner has to be exempted from the Renewable Power Purchase Obligation as requested by it.

14. While main petition has to be thus allowed, there is no need to pass any orders on the Interlocutory Application any further. The petitions have to be disposed of accordingly.

15. In the result, O.P.No.21 of 2014 is allowed and the petitioner (the Visakhapatnam Steel Plant, a unit of the petitioner) shall stand exempted from the Renewable Power Purchase Obligation under Regulation 1 of 2012 of this Commission, as prayed for. I.A.No.7 of 2014 is dismissed as no longer necessary. Parties shall bear their own costs in the main petition and the interlocutory application.

This order is corrected and signed on this **23rd day of May, 2015.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman