

**Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No.53 of 2012**

**Dated: 2<sup>nd</sup> Dec, 2013**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. V.J. Talwar, Technical Member**

**In the matter of:**

**Lloyds Metal & Energy Ltd.  
Trade World, 'C' Wing, 16<sup>th</sup> Floor  
Kamala City, Senapati Bapat Marg  
Lower Parel (W), Mumbai – 400 013**

**...Appellant(s)**

**Versus**

**1. Maharashtra Electricity Regulatory  
Commission  
13<sup>th</sup> Floor, World Trade Centre  
Cuffe Parade  
Mumbai - 400 005**

**...Respondent(s)**

**2. Maharashtra State Electricity Distribution Company  
Limited  
Plot No. G-9, Prakashgad, Prof Anant Kanekar Marg  
Bandra (E), Mumbai 400 051**

3. **Tata Power Company Limited (Distribution)**  
**Corporate Centre, 'B' 34, Sant Tukaram Road**  
**Carnac Bunder, Mumbai - 400 009**
  
4. **Reliance Infrastructure Limited (Distribution)**  
**Reliance Energy Centre**  
**Santacruz (E), Mumbai - 400 055**
  
5. **The B.E.S & T Undertaking**  
**BEST Bhavan, BEST Marg**  
**Fort, Mumbai 400 001**

**Counsel for the Appellant (s) :** **Mr. J.J. Bhatt, Sr. Advocate**  
**Mr. M.G.Ramachandran**  
**Mr. Anand K. Ganesan**  
**Ms. Swapna Seshadri**  
**Mr. Abhishek Khare**  
**Mr. Prashant Puri(Rep.)**

**Counsel for the Respondent(s):** **Mr. Buddy A. Ranganadhan**  
**Mr. Arijit Maitra**  
**Ms. Richa Bharadwaja**  
**Mr. Abhishek Mitra**  
**Ms. Puja Priyadarshini**  
**Mr. Ravi Prakash**

## **JUDGMENT**

**PER MR. V.J. TALWAR, TECHNICAL MEMBER**

- 1 The present Appeal has been filed by the Appellant against the impugned interim order dated 29.12.2011

- passed by Maharashtra Electricity Regulatory Commission (“Maharashtra Commission”) for not determining the tariff for coal based co-generation plant of the Appellant and not fixing purchase obligation of the Distribution Licensees from the co-generation plant under Section 86(1)(e) of the Electricity Act, 2003.
2. This judgment is being given on the question of law referred to the Full Bench of the Tribunal vide order dated 23.9.2013 by the Division Bench of the Tribunal.
  3. The Maharashtra Commission is the Respondent no.1 and Respondent 2 to 4 are the Distribution Licensees.
  4. The Brief facts of the case are as under:-
    - A) The Appellant is a steel manufacturing company which has commissioned a 30 MW capacity co-generation power plant based on industrial waste heat generated by the sponge iron plant of the Appellant with the use of fossil fuel (coal).
    - B) The Appellant filed a petition before the State Commission for determination of tariff for supply of electricity from its fossil fuel based co-generation plant to the Distribution Licensees in Maharashtra and for

fixation of purchase obligation of the Distribution Licensees from electricity produced from fossil fuel based co-generation plant under Section 86(1)(e) of the Electricity Act, 2003.

- C) The State Commission vide impugned order dated 29.12.2011 refused to grant the reliefs sought for by the Appellant including interim relief to enable sale of electricity from the Appellant's co-generation plant to the Distribution Licensees against purchase obligation under Section 86(1)(e) of the Electricity Act.
- D) Aggrieved by the impugned order dated 29.12.2011, the Appellant filed this Appeal in Appeal no. 53 of 2012. This Appeal was heard by the Division Bench of the Tribunal. The Division Bench considered the issue in light of the judgment dated 26.4.2010 of the Tribunal in Appeal no. 57 of 2009 in the matter of Century Rayon Ltd. Vs. Maharashtra Electricity Regulatory Commission and others and felt that the issue whether the Distribution Licensees could be fastened with the obligation to purchase a percentage of its consumption from co-generation irrespective of fuel used is a very important issue and needs to be re-examined by the

Full Bench. Accordingly the matter was heard by the Full Bench of the Tribunal.

5. The limited question which has been referred to the Full Bench of Tribunal is as follows:

“Whether the Distribution Licensees could be fastened with the obligation to purchase a percentage of its consumption from co-generation irrespective of the fuel used under Section 86(1)(e) of the Act 2003.”

6. On the above limited issue we have heard Shri J.J. Bhatt, Learned Senior Advocate representing the Appellant and Shri Buddy A. Ranganadhan, Learned Counsel for the Maharashtra Commission.

7. Shri J.J. Bhatt, Learned Senior Advocate representing the Appellant has made the following submissions:

(A) The question framed by the Division Bench addresses itself to the possibility or permissibility within the law of the obligation to purchase a percentage of its consumption by a Distribution Licensee from a co-generator irrespective of fuel used and not whether a State Commission is

bound to direct a Distribution Licensee to meet its obligations by purchasing from co-generation. In other words, the question is not whether it is a must or mandatory to promote co-generation by directing the Distribution Licensee to purchase electricity from co-generator irrespective of fuel used, but the question is whether one of the possible method of promoting co-generation from fossil fuel is by directing the Distribution Licensee to purchase electricity also from such co-generation.

- (B) This Tribunal in its judgment dated 26.4.2010 in Appeal no. 57 of 2009 in the matter of Century Rayon Vs. Maharashtra Electricity Regulatory Commission & Ors has categorically held that co-generation in Section 86(1)(e) does not mean co-generation from renewable sources alone, but co-generation from other sources, including conventional sources such as fossil fuel is also covered under the purview of Section 86(1)(e) and ought to be promoted

- (C) The findings in Century Rayon case have been followed in by the Tribunal in its various subsequest judgments Viz.,
- (i) Judgment dated 30.11.2013 in Appeal no. 54 of 2012 in the matters of Emami Paper Mills Ltd. Vs. Odisha Electricity Regulatory Commission & Ors.;
  - (ii) Judgment dated 31.01.2013 in Appeal no. 59 of 2012 in the matter of Vedanta-Aluminium Ltd. Vs. Orissa Electricity Regulatory Commission; and
  - (iii) Judgment dated 10.4.2013 in Appeal no. 125 of 2012 in the matter of Hindalco Industries Ltd. Vs. Uttar Pradesh Regulatory Commission.

Thus, the position as laid down by the above judgments that co-generation irrespective of the source is to be promoted under Section 86(1)(e) is well settled and undisputed. The only question that remains to be considered is whether fastening the Distribution Licensee with the obligation to purchase a percentage of its consumption from co-generation irrespective of fuel used is one of the possible or permissible methods of promoting

co-generation from fossil fuel under Section 86(1)(e).

- (D) Section 86(1)(e) is in two parts viz. promote co-generation and promote generation of electricity for renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of total consumption of electricity in the area of a Distribution Licensee. Thus, while in the case of co-generation from fossil fuel, any method of promoting co-generation is possible and open to be prescribed by the State Regulatory Commission in case of generation of electricity from renewable sources of energy the Commissions are required, *inter alia*, to specify for purchase of electricity from renewable sources a percentage of total consumption of electricity in the area of Distribution Licensee. Thus, the distinction between the requirement to promote co-generation and generation of electricity from renewable sources is that while it is left open to the State Electricity Regulatory Commission to

adopt a method or methods to promote co-generation from fossil fuel, in case of generation of electricity from renewable sources it is mandatory for the Commission to promote same by specifying for purchase of electricity from such sources, a percentage of total consumption of electricity in the area of Distribution Licensee.

8. Shri Buddy A. Ranganadhan, Learned Counsel for the State Commission has made the following submissions on the question of law referred to Larger Bench of the Tribunal.

(A) If the Tribunal takes a view that co-generation from fossil fuel “could” be a source of renewable energy, the further question as to “should” such source or “must” such source necessarily be promoted in a particular manner and/or to what extent and in what manner it ought to be promoted would still have to be considered and specified by the State Regulatory Commission by framing Regulations for the same.

(B) Under the RPO Regulations, 2010 of Maharashtra Commission read with Commission’s RE Tariff

Regulations, 2010, a fossil fuel based co-generation is not a source of renewable energy unless it is approved as such by the Ministry of New and Renewable Energy.

- (C) In the Century Rayon judgment, this Tribunal held that the word “and” between the words “generation” and “co-generation” must be read disjunctively. Thus, co-generation is not to be read synonymously with “renewable sources”. It would therefore mean that purchase obligation under the said section could only be from a “renewable source” and not from fossil fuel based co-generation.
- (D) Clause 5.12.1 & 5.12.2 of the National Electricity Policy clearly indicate that the emphasis on the intention behind Section 86(1)(e) is to promote generation and co-generation from non-conventional and renewable sources of energy and not to promote fossil fuels. Even Clause 5.12.3 read in conjunction with the two earlier Clauses makes it clear that the co-generation being discussed in the subject of promotion is for

co-generation in the sugar industry i.e. co-generation with renewable source of energy.

- (E) Clause 6.4 of the National Tariff Policy makes it clear that it deals with generation including co-generation from renewable sources only.
  - (F) Clause 6.4 of the Tariff Policy has since been amended on 22.1.2011. The amended Tariff Policy makes it explicitly clear that Section 86(1)(e) deals really with renewable sources of energy and not fossil fuel base co-generation.
  - (G) The above position is established by the report of the Standing Committee of the Parliament on Electricity Act.
9. Let us now examine the findings of the Tribunal in Century Rayon case.

*“(I) The plain reading of Section 86(1)(e) does not show that the expression ‘co-generation’ means cogeneration from renewable sources alone. The meaning of the term ‘co-generation’ has to be understood as defined in definition Section 2 (12) of the Act.*

- (II) *As per Section 86(1)(e), there are two categories of `generators namely (1) co-generators (2) Generators of electricity through renewable sources of energy. It is clear from this Section that both these categories must be promoted by the State Commission by directing the Distribution Licensees to purchase electricity from both of these categories.*
- (III) *The fastening of the obligation on the co-generator to procure electricity from renewable energy procures would defeat the object of Section 86 (1)(e).*
- (IV) *The clear meaning of the words contained in Section 86(1)(e) is that both are different and both are required to be promoted and as such the fastening of liability on one in preference to the other is totally contrary to the legislative interest.*
- (V) *Under the scheme of the Act, both renewable source of energy and cogeneration power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that cogeneration plants, who provide many number of benefits to environment as well as to the public at large, are to be entitled to be treated at par with the other renewable energy sources.*
- (VI) *The intention of the legislature is to clearly promote cogeneration in this industry generally irrespective*

*of the nature of the fuel used for such cogeneration and not cogeneration or generation from renewable energy sources alone.*

*46. In view of the above conclusions, we are of the considered opinion that the finding rendered by the Commission suffers from infirmity. Therefore, the same is liable to be set aside. Accordingly, the same is set aside. Appeal is allowed in terms of the above conclusions as well as the findings referred to in aforesaid paras 16,17,22 and 44. While concluding, we must make it clear that the Appeal being generic in nature, our conclusions in this Appeal will be equally applicable to all co-generation based captive consumers who may be using any fuel. We order accordingly. No costs.”*

10. In the above case, the issue under dispute was that whether a person consuming electricity from its captive fossil fuel based co-generation plant could be compelled to purchase electricity from renewable source of energy against the Renewable Purchase Obligation specified by the Commission for the obligated entities under Section 86(1)(e) of the Act. However, the Tribunal decided that not only a person consuming electricity from its captive fossil fuel based co-generation plant could not be compelled to purchase electricity from renewable energy sources but both the

categories i.e. co-generators irrespective of fuel used and generators of electricity through renewable sources of energy must be promoted by the State Commission by directing the Distribution Licensees to purchase electricity from both these categories.

11. In order to find out the intention of the legislature while enacting the Electricity Act, 2003 in regard to promotion of co-generation and generation from renewable sources of energy for construction of Section regarding Purchase Obligation under Section 86(1)(f), let us examine the Report of the Standing Committee on energy on the Electricity Bill presented to Lok Sabha on 19.12.2002. The relevant extracts of the Report indicating the salient features of the Bill are as under:-

**“I. Generation**

- (i) *Generation would be free from licensing. Generation would need to conform to technical standards for grid connectivity and co-ordinate with the transmission utility for evacuation of power.*
- (ii) *Hydel projects above a prescribed size would, however, need prior approval of the State Government and clearance from the Central Electricity Authority.*

- (iii) Captive generation is being made fully free. Captive generation would also have open access through the grid to its own premises subject to availability of adequate transmission facilities. Surplus power from captive power plants can be supplied through the grid subject to normal regulatory control.*
- (iv) The tariffs at which generators would sell electricity to licensees through contracts extending beyond one year would be determined by the Regulatory Commissions.*
- (v) Generation from non-conventional and renewable sources is to be promoted and Regulatory Commissions may from time to time prescribe a minimum percentage of power to be purchased from such sources.”*

The Report of the Standing Committee on energy clearly indicates that the intention of the legislature while enacting the Electricity Act, 2003 was that the generation from non-conventional and renewable sources is to be promoted and the Commissions may from time to time prescribe a minimum percentage of power to be purchased from such (non-conventional and renewable) sources.

12. Now let us examine the National Electricity Policy ('NEP'). The relevant extracts are as under:

**“5.12 COGENERATION AND NON-CONVENTIONAL ENERGY SOURCES**

*5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.*

*5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a Distribution Licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest.*

*Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.*

*5.12.3 Industries in which both process heat and electricity are needed are well suited for cogeneration of electricity. A significant potential for cogeneration exists in the country, particularly in the sugar industry. SERCs may promote arrangements between the co-generator and the concerned Distribution Licensee for purchase of surplus power from such plants. Cogeneration system also needs to be encouraged in the overall interest of energy efficiency and also grid stability.”*

13. Clause 5.12.1 of the NEP emphasis that there is urgent need to promote generation based on non-conventional sources of energy as such sources are environment friendly. Besides making efforts to reduce the cost of energy for such sources, adequate promotional

measures have to be taken for development of technologies and sustained growth of these sources.

14. Clause 5.12.2 reproduces the provision of Section 86(1)(e) of the Electricity Act and states that percentage of purchase of power from non-conventional sources as stipulated in the above provision should be made applicable in the tariff to be determined by the State Electricity Regulatory Commissions at the earliest. It further states that the share of non-conventional sources of energy needs to be increased progressively as prescribed by the State Commission.
15. Clause 5.12.2 of the NEP further states that power has to be procured by the Distribution Licensees through competitive bidding. However, it may take some time before the energy from non-conventional sources can compete with energy from conventional sources. Therefore, the State Commission in order to promote generation from non-conventional sources of energy may determine appropriate differential in prices of non-conventional sources of energy. Admittedly, the electricity generation from co-generation from fossil fuel is not a generation from non-conventional sources of

energy or renewable sources of energy. Co-generation based on fossil fuel is also expected to produce electricity at lower price considering the high efficiency of co-generation process, compared to similar capacity generating plant generating electricity on conventional sources of energy. Thus, there will not be any need to provide for preferential tariff for such co-generation plants based on fossil fuel.

16. Clause 5.12.3 of the NEP states that there is lot of potential for co-generation in the country particularly in sugar industry. Even in this Clause the example of co-generation given is that of sugar industry where bagasse is used as fuel and which is considered as renewable source of energy. Clause 5.12.3 also states that the State Electricity Regulatory Commission may promote arrangements for purchase of surplus power from co-generation plants by the Distribution Licensees. Further, co-generation needs to be encouraged in the interest of energy efficiency and grid security. The thermal efficiency of the co-generation plant is higher compared to similar capacity generating plant and, therefore, encouragement of co-generation will help in increasing overall efficiency of the system. The co-

generation plants are also generally located near the load centers. The captive load of the industry where co-generation plant is located is also a load for the co-generation plant. The generation at load centre helps in improving the grid stability.

17. Thus, the National Electricity Policy stipulates specifying of a percentage of total consumption in the area of the Distribution Licensee by the State Commission only from non-conventional or renewable sources of energy. The determination of appropriate differential in prices of electricity by the State Commission is also with respect to only non-conventional sources of energy only. There is no mention of specifying purchase obligation for the Distribution Licensees from co-generation based on fossil fuel. There is also no requirement of determining appropriate differential in prices for co-generation based on fossil fuel as the thermal efficiency of a co-generation plant based on fossil fuel is higher compared to a fossil fuel based generating station of similar size and consequently the cost of production at fossil fuel based co-generation plant is lower. Therefore, rightly no differential in prices of electricity at

fossil fuel based co-generation plant has been stipulated in the NEP.

18. In Clause 5.12.3 the example of co-generation given is that of in sugar industry which is based on renewable source of energy. Even if it is assumed that co-generation stated in Clause 5.12.3 also includes fossil fuel based co-generation, this Clause only provides that the State Commission may promote arrangements for purchase of surplus power from such plants in the overall interest of energy efficiency and grid stability. There is no binding purchase obligation on the Distribution Licensee from co-generation based on fossil fuel. However, the State Commission shall facilitate arrangements for supply of electricity by a fossil fuel based co-generation to a Distribution Licensee and if the State Commission is approached to determine the price of electricity from such fossil fuel based co-generation to the Distribution Licensee it would determine the same under Section 62 of the Electricity Act, 2003.
19. Thus, if the Distribution Licensee purchases the surplus power of the Appellant's fossil fuel based co-generation

- plant to meet its consumer's demand the State Commission shall facilitate the arrangement. If the arrangement is entered into through tariff based competitive bidding as per Section 63 of the Act, the Commission shall see if the competitive bidding process has been undertaken as per the Standard Bidding Document of the Central Government. The State Commission could also determine tariff for procurement of power from fossil fuel based co-generation plants under Section 62 of the Act.
20. In the Century Rayon judgment, all the sub-Clauses of Clause 5.12 of NEP have not been referred to Century Rayon judgment only refers to Sub-Clause 5.12.3 and not Sub-Clauses 5.12.1 & 5.12.2. Complete reading of all sub-Clause of Clause 5.12 of NEP only gives the correct perspective of the National Electricity Policy as described in the earlier paragraphs of the present judgment.
  21. The position taken in the NEP regarding utilisation of surplus electrical power capacity of captive co-generation plants for meeting the demand of the Distribution Licensees also becomes clear from

Clauses 5.2.24 to 5.2.26 of the NEP, which are reproduced below:

**“Captive Generation**

*5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.*

*5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.*

*5.2.26 A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act,*

*captive generators have access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end, non-conventional energy sources including co-generation could also play a role. Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangements between captive generators and licensees and determine tariffs when a licensee is the off-taker of power from captive plant.”*

22. Clauses 5.2.24 to 5.2.26 provide for procurement of surplus power from captive power plants including non-conventional energy sources to meet the request of the Distribution Licensee. In such procurement by the Distribution Licensee from captive power plants has to be approved by the State Commission.
23. Let us examine the Clause 6.4 of the Tariff Policy.

**“6.4 Non-conventional sources of energy generation including Co-generation:**

- (1) *Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006. It will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.*
- (2) *Such procurement by Distribution Licensees for future requirements shall be done, as far as possible, through competitive bidding process under Section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long-term, these technologies would need to compete with other sources in terms of full costs.*
- (3) *The Central Commission should lay down guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.”*

24. The heading of the Clause 6.4 of the Tariff Policy states non-conventional sources of energy generation including co-generation. This clearly indicates that Clause 6.4 pertains to only the non-conventional sources of energy and co-generation also from non-conventional sources of energy. Clause 6.4 stipulates the follows:

- (I) The State Commission under Section 86(1)(e) has to fix a minimum percentage for purchase of energy from non-conventional sources of energy. As it will take some time before non-conventional technologies can compete with conventional sources in terms of cost of generation, the appropriate Commission shall determine the preferential tariffs for procurement of power by distribution licensees from such sources.
- (II) The procurement by distribution licensee from non-conventional sources of energy shall be as far as possible through competitive bidding process under Section 63 of the Act for the same type of non-conventional sources. In the long term the

non-conventional sources of energy would have to compete with other sources.

(III) In cases where such procurement is not through competitive bidding, the Central Commission should lay down guidelines for pricing of non-firm power specially from non-conventional sources.

25. The Tariff Policy also stipulates fixation of purchase obligation and preferential tariff only from non-conventional or renewable sources of energy and not fossil fuel based co-generation. Admittedly, the efficiency of fossil fuel based co-generation plant is much higher than similar size fossil fuel based generating stations producing only electricity. Therefore, there is no such requirement for determining the preferential tariff for fossil fuel based co-generation plant where the tariff is expected to be lower than similar size fossil fuel based generating stations producing only electricity owing to higher efficiency of co-generation and utilisation of a part of co-generation facilities for generation of steam or heat for use in the industrial process.

26. In the Century Rayon judgment the complete Clause 6.4 of the Tariff Policy was not referred to and reliance was placed only on a part of the Clause 6.4.
27. It is also pertinent that the Tariff Policy has since been amended by Government of India by Resolution dated 20.1.2011 and the revised Clause 6.4 is as under:

*“6.4 Non-conventional and renewable sources of energy generation including co-generation.*

- (1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a Distribution Licensee for purchase of energy from such sources, taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006.*
- (i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification in the Official Gazette which will go up to 0.25% by the end of 2012-13 and further up to 3% by 2022.*
- (ii) It is desirable that purchase of energy from non-conventional sources of energy takes place more*

*or less in the same proportion in different States. To achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be evolved. Through such a mechanism, the renewable energy based generation companies can sell the electricity to local Distribution Licensee at the rates for conventional power and can recover the balance cost by selling certificates to other distribution companies and obligated entities enabling the latter to meet their renewable power purchase obligations. In view of the comparatively higher cost of electricity from solar energy currently, the REC mechanism should also have a solar specific REC.*

*(iii) It will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.”*

28. The heading of the revised Clause 6.4 indicates that it pertains to non-conventional and renewable sources of energy generation including co-generation also from such sources of energy. The Clause 6.4 has been amended to provide for reservation of a minimum

percentage for purchase of solar energy in the Renewable Purchase Obligation of the distribution licensee and purchase of Renewable Energy Certificate to fulfill the Renewable Purchase Obligation.

29. The amended Clause 6.4 of the Tariff Policy clearly indicates that under Section 86(1)(e) of the Electricity Act, the Appropriate Commission has to fix the minimum percentage of total consumption of Electricity in the area of Distribution Licensee for purchase of energy from non-conventional and renewable sources of energy including co-generation also from non-conventional and renewable sources.
30. Let us now examine the definition of co-generation. The definition as given in Section 2 (12) is as under:

*““cogeneration” means a process which simultaneously produces two or more forms of useful energy (including electricity);”*

Thus, cogeneration is defined as a process in which two forms of useful energy, one of which is electricity are produced simultaneously. Co-generation could be from fossil fuel or renewable source of energy and the fuel source has not been indicated in the definition.

30. Similarly generate has been defined under Section 2(29) as “to produce electricity from a generating station for the purpose of giving supply to any premises or enabling or supply to be so given.” Here also generate is a process irrespective of type of fuel used.

31. Let us now examine 86(1)(e) of the Act:

*“86. Functions of State Commission.-(1) The State Commission shall discharge the following functions, namely:-*

...

*(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a Distribution Licensee;”*

...

32. Plain reading of the Section 86(1) (e) read with 2(12) of the 2003 act would reveal that the State Commission is required to promote the co-generation and generation of electricity from renewable sources of energy. Section 86(1) (e) further mandates the Commission to specify

certain quantity of electricity, in percentage, to be procured from renewable sources of energy. Co-generation, as per definition given in Section 2(12) of the act, is only a process of generation of electricity and another form of energy and cannot be termed as source of electricity.

33. This important aspect has not been considered in the Century Rayon judgment, where in this Tribunal had held that the State Commission has to promote both co-generation as well as generation of electricity from renewable sources of energy. Accordingly, we feel that the State Commission could promote the fossil fuel based co-generation by any other measures such as facilitate sale of electricity from such sources, grid connectivity, etc., but the State Commission could not compel the Distribution Licensee to procure electricity from fossil fuel based co-generation against the purchase obligation to be specified under Section 86(1)(e) of the Electricity Act, 2003.
34. Let us now examine Clause Section 61 of the Electricity Act relating to promotion of cogeneration and generation of electricity from renewable sources of energy :-

*“61. Tariff regulations.- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

*(a).....*

*(g).....*

*(h) the promotion of co-generation and generation of electricity form renewable sources of energy;”*

*(i) .....”*

35. Accordingly, the State Commission has framed Regulations viz. Renewable Purchase Obligation Regulations and Renewable Energy Tariff Regulations. According to these Regulations the fossil fuel based co-generation plant is not a qualified renewable energy source for procurement of power under the purchase obligation of the distribution licensees.

36. The Renewable Energy Sources are defined as Renewable sources such as mini, micro and small hydro, wind, solar, biomass including bagasse, bio fuel co-generation, urban or municipal waste and such sources as recognized or approved by the Ministry of

New and Renewable Energy. The fossil fuel based cogeneration is not covered in the eligible sources. Accordingly, Tariff Regulations have not been specified for fossil fuel based cogeneration plant.

37. The Renewable Purchase Obligation Regulations of 2010 of the State Commission defines the preferential tariff as the tariff fixed by the State Commission for sale of energy from a generating station based on renewable energy sources under the Distribution Licensee in accordance with tariff Regulations for Renewable Energy Sources of 2010. Fossil fuel based co-generation is not included in the eligible generation sources for meeting a Renewable Purchase Obligation of obligated entities who have to mandatorily meet their Renewable Purchase Obligation targets under these Regulations. However, the captive users consuming power from grid connected fossil fuel based cogeneration plants have been exempted from applicability of Renewable Purchase Obligation target. Thus, according to the State Commission's Regulations there is no purchase obligation of the Distribution Licensee from fossil fuel based co-generation plants. Accordingly, no preferential tariff has been determined

for purchase of energy from fossil fuel based cogeneration plant. We feel that these Regulations have been made in consonance with the provisions of the Act, National Electricity Policy and Tariff Policy which do not provide for any purchase obligation of the Distribution Licensees from fossil fuel based cogeneration. Accordingly, the State Commission has correctly rejected the prayer of the Appellant for determining the tariff and purchase obligation of Distribution Licensees from fossil fuel based cogeneration.

38. In view of above we answer the question referred to the Full Bench in negative. Accordingly, we also dismiss the Appeal.

**39. Summary of our findings:**

**Upon conjoint reading of the provisions of the Electricity Act, the National Electricity Policy, Tariff Policy and the intent of the legislature while passing the Electricity Act as reflected in the Report of the Standing Committee on Energy presented to Lok Sabha on 19.12.2002, we have come to the conclusion that a distribution company**

cannot be fastened with the obligation to purchase a percentage of its consumption from fossil fuel based co-generation under Section 86(1)(e) of the Electricity Act, 2003. Such purchase obligation 86(1)(e) can be fastened only from electricity generated from renewable sources of energy. However, the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc.

40. In view of above, the Appeal is dismissed as devoid of any merit without any order to costs.

(V.J. Talwar)  
Technical Member

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

Date : 02<sup>nd</sup> Dec, 2013

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~~REPORTABLE/NON-REPORTABLE~~