

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Withdrawal of Show-Cause notices dated March 12, 2013 in pursuance to Judgment dated October 01, 2014 of the Hon'ble Appellate Tribunal for Electricity in Appeal Nos. 112, 130 & 136 of 2014.

In the matter of:

1. M/s Birla Tyres Kesoram Industries
2. M/s Gujarat Ambuja Exports Ltd.
3. M/s Sidharth Papers Ltd. (Unit-2)
4. M/s Siddheshwari Paper Udyog Ltd.
5. M/s Century Pulp and Paper Mill
6. M/s Shree Shyam Pulp and Board Mill
7. M/s India Glycols Ltd.
8. M/s B AHL Paper Mills Ltd.
9. M/s Hanung Toys & Textiles Ltd. ...Respondents

CORAM

Shri Subhash Kumar	Chairman
Shri C.S. Sharma	Member
Shri K.P. Singh	Member

Date of Order: November 17, 2014

The Order is being issued in compliance to the Judgment dated 01.10.2014 in Appeal nos. 112, 130 & 136 filed before Hon'ble ATE by Respondent nos. 7, 5 & 1 respectively.

Background of the matter and decision in compliance to the aforesaid Judgment are as follows:

1. The Commission had issued show-cause notices dated 12.03.2013 to the above referred Respondent nos. 1 to 9 to show cause why action should not be taken under the Electricity Act, 2003 for non-compliance of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and UERC (Tariff and Other Terms for Supply of Electricity from Renewable

Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010. In reply, some of the captive users submitted that as they were co-generation based captive user, therefore, in accordance with the Judgment dated 26.04.2010 of the Hon'ble ATE in the matter of Century Rayon vs. MERC (Appeal no. 57/2009), RPO obligation should not be imposed on them. Respondent no. 1 also filed a separate petition before this Commission seeking exemption from RPO compliance.

2. In the meantime, the Commission issued amendment to UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 which was applicable w.e.f. 28.12.2013, wherein, in accordance with the aforesaid Judgment dated 26.04.2010 of the Hon'ble ATE, the definition of "obligated entity" had been amended absolving the co-generation based captive user from compliance of RPO.
3. Thereafter, the Commission while relying upon the prevailing meaning of "obligated entity" as defined in UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010, vide Order dated 13.03.2014 & 10.04.2014 decided as follows:
 - (i) All the captive users in accordance with definition of "obligated entity" were made liable to comply with RPO till 27.12.2013.
 - (ii) However, in accordance with the UERC (Compliance of Renewable Purchase Obligation)(First Amendment)Regulations, 2013, co-generation based captive user have been exempted from compliance of RPO w.e.f. 28.12.2013.
4. Respondent nos. 1, 5 & 7 filed Appeal nos. 136, 130 & 112 respectively before the Hon'ble ATE against the aforesaid Order dated 10.04.2014 of the Commission. The Hon'ble ATE vide its Judgment dated 01.10.2014 decided as follows:

"23. The Co-generation based Captive Power Plant/Captive user cannot be fastened with renewable purchase obligation as provided under UERC (Compliance of RPO) Regulations, 2010, as subsequently, amended by UERC (Compliance of RPO) (First Amendment) Regulations, 2013. The judgment, dated 26.4.2010 of this Appellate Tribunal in Appeal No. 57 of 2009 in the case of Century Rayon vs. MERC, whereby the provisions of Section 86(1)(e) of the Electricity Act, 2003 were interpreted and in compliance of which the learned State Commission has amended the definition 'Obligated entity' as was then existing in UERC (Compliance of RPO) Regulations, 2010 by UERC (Compliance of RPO) (First Amendment) Regulations, 2013, shall be held to be applicable from the date of the judgment itself. Though, in compliance of the said judgment, dated 26.4.2010, the Regulations were amended in the year 2013 by the State Commission. It was a fit case where the State

Commission should have exercised its power to relax according to its own Regulations in order to give effect to the judgment, dated 26.4.2010, passed by this Appellate Tribunal in Appeal No. 57 of 2009, in the case of Century Rayon vs. MERC in letter and spirit, in order to give relief to the Co-generation based Captive Power Plants/Captive users entitled to it.

24. The State Commission should have granted relief and exempted the Co-generation based Captive Power Plants/Captive users as per the judgment, dated 26.4.2010, of this Appellate Tribunal in Appeal No. 57 of 2009, immediately on coming to the knowledge of the same and without waiting for the amendment of the relevant State RPO Regulations, 2010 (Principal Regulations). The State Commission has, since amended the required Regulations dealing with the definition of 'Obligated entity' by introducing or enacting UERC (Compliance of RPO) (First Amendment) Regulations, 2013, it was incumbent upon the State Commission to consider the submissions of the Appellants and other like co-generation based Captive Power Plants/Captive users and to grant relief to them. Since, the State Commission has failed in its duty to do the same; we are constrained to rectify the illegality committed by the State Commission without remanding the matter and again burden the State Commission with the same exercise.

25. Consequently, all the three Appeals, being Appeal Nos. 112 of 2014, 130 of 2014 and 136 of 2014, are hereby allowed and the impugned orders, dated 13.3.2014 (in Appeal No. 112 of 2014) and, dated 10.4.2014 (in Appeal Nos. 130 and 136 of 2014) passed by the Uttarakhand Electricity Regulatory Commission, are hereby set-aside.

26. We further order that the relief granted herein shall be applicable to all Co-generation based Captive Power Plants/Captive users as they are also covered by the newly amended definition of 'Obligated entity' and shall not be confined to the Appellants before us.

27. The State Commission is hereby directed to act upon this judgment positively within three months from the date of communication of this judgment. No order as to costs. "

5. In view of the above Judgment and in compliance to the direction issued by the Hon'ble ATE, the Commission has decided to withdraw all the show-cause notices dated 12.03.2013 issued to the co-generation based captive users. Consequent upon withdrawal of such show-cause notices, the decisions and directions issued for such co-generation based captive users by the Commission vide Order dated 13.03.2014 & 10.04.2014 shall also be vacated.

6. Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Subhash Kumar)
Chairman