

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 335 of 2019**

**Case of JSW Steel Limited seeking exemption from the requirement to meet Renewable Purchase Obligations targets to the extent of its consumption from its cogeneration plants at Dolvi.**

JSW Steel Limited ..... Petitioner

Maharashtra Energy Development Agency ..... Respondent

**Coram**

**I.M. Bohari, Member  
Mukesh Khullar, Member**

**Appearance**

For the Petitioner : Sh. Sanjay Sen (Adv.)  
For the Respondent : Dr. Torane (Rep.)

**ORDER**

**Date: 29 August, 2020**

1. JSW Steel Ltd. (**JSWSL**) has filed the present Petition on 9 December 2019 under Sections 61, 86(1)(e) and 86(1)(k) of the Electricity Act, 2003 (**EA**) seeking exemption from the requirement to meet Renewable Purchase Obligations (**RPO**) targets to the extent of its consumption from its cogeneration plants at Dolvi.

2. **JSWSL's main prayers are as follows:**

*a) direct the Respondent to take on record the submissions made by the Petitioner in relation*

*to the Petitioner's Dolvi Unit and issue a certificate of compliance or certificate of exemption with respect to the applicable RPO Regulations for FY 2010-11 to FY 2013-14 and also the subsequent years since the Petitioner's consumption from its cogeneration plants is in excess of the presumptive RPO Targets (to the extent of OA consumption) for the relevant years ending up to March 31, 2019;*

- b) in the alternative, hold and declare that the Petitioner's Dolvi Unit is not obligated to meet the RPO Targets specified for OA consumers and therefore, declare the Dolvi Unit as being compliant with the applicable RPO Regulations for FY 2010-11 and thereafter; and*
- c) To accord approval to make this power eligible for meeting the Wind-Solar RPO requirement of the Petitioner;*

### **3. JSWSL in its Case has stated as follows:**

- 3.1. It owns a steel manufacturing unit located at Dolvi in the State of Maharashtra and has established the following Captive Power Plant(s) (CPP) at its Dolvi unit:
  - a. Gas Expansion Turbine (GET): 14 MW (Differential Pressure based) (previously 6.5MW); and
  - b. Waste-gas based co-generation plant: 53.5 MW.
- 3.2. Dolvi Unit has one blast furnace of 4323 m<sup>3</sup> capacity. The said furnace operates at a pressure of 3.5 bar and the pressure of the gas coming out of the blast furnace has energy generating potential. The blast furnace gas leaves from the furnace top with high pressure at approximately 1.98 bar and has volume of approximately 560 KNm<sup>3</sup>/hr. The kinetic energy of this gas is utilized to rotate turbine and hence to generate power. This pressure energy is converted into 14 MW power through mechanical turbine.
- 3.3. In addition, the exhaust flue gases produced during the iron making process, has its own inherent heat capacity which is utilized through Boiler Turbine Generator route to produce 53.5 MW. In absence of the 53.5MW CPP, waste heat energy of Blast Furnace gases would be wasted and the equivalent power requirement would be met through fossil fuel based power plants.
- 3.4. JSWSL had filed a petition in September 2013 before the Commission bearing Case No. 134 of 2013 seeking the following relief(s):

*“a) Declare and hold that the electricity produced and consumed by the Petitioner from its cogeneration plants of 6.5 MW and 53.5 MW would meet /offset the corresponding*

*RPO target of the Petitioner and its group companies in respect of units located in Maharashtra, under the MERC RPO Regulations;*

*b) Direct the implementing agency to take into account and give effect to the decision in (a) above; ...”*

3.5. This Commission in its Order dated 12 April 2018 gave the following dispensation:

“ ...

*16. The RPO targets specified under the RPO Regulations, 2010 are applicable to Obligated Entities, i.e. Distribution Licensees, OA consumers and captive consumers as follows:*

.....

*Regulation 11.3 makes an Obligated Entity which does not fulfill its RPO liable to Regulatory Charges as specified in Regulation 12.1, with the following exception:*

*“...Provided further that captive user(s) consuming power from grid connected fossil fuel based co-generation plants, are exempted from applicability of RPO target and other related conditions as specified in these Regulations.”*

*Thus, JSWSL is exempt from RPO to the extent that is consuming power from its fossil fuel-based Co-Generation CPP.*

...

*18. The Commission also notes that JSWSL has presented the following details in its Petition and during these proceedings:*

*-The Dolvi Unit is with JSWSL (earlier with JSW Ispat, now merged with JSWSL). Thus, JSWSL (and earlier JSW Ispat) is exempt from RPO to the extent of the consumption of its Dolvi Unit from the Dolvi Co-Generation CPPs. According to JSWSL, on the basis of the bill and documents furnished, in FY 2010-11, the Dolvi Unit obtained all its power from MSEDCL and, hence, no RPO is applicable. In FY 2011-12, it obtained power from its 6.5 MW CPP 1, and OA started from 19 January, 2012. If that is the case, JSWSL (earlier JSW Ispat) is exempt from RPO to that extent.*

*According to JSWSL, the Kalmeshwar Unit of JSW Steel Coated (also earlier with JSW Ispat), obtained all its power from MSEDCL in FY 2010-11 and FY 2011-12, and availed OA only from 11 May, 2012.*

*- As regards the Vasind Unit of JSW Steel Coated (earlier with JSWSL), it is claimed that in FY 2010-11, “most” of the power was sourced; that all of the power consumed in FY 2011-12 was from MSEDCL; and that OA started from October, 2012.*

*- As regards the Tarapur Unit of JSW Steel Coated (earlier with JSWSL), the submission dated 21 March, 2013 and the tabular statement are unclear and inconsistent as regards the details of self-consumption and other OA availed in those 2 years.*

*19. Some of these submissions and details provided by JSWSL are unclear, inconsistent or inadequate. However, the Commission is dealing separately in Case No. 101 of 2017 with the verification of RPO compliance by Obligated Entities other than Distribution Licensees for FY 2010-11 to FY 2013-14, and the factual matrix in this regard is outside the scope of the present proceedings. The RPO compliance verification shall take into account the Commission's conclusions recorded earlier in this Order.*

*The Petition of M/s JSW Steel Ltd. in Case No. 134 of 2013 stands disposed of accordingly."*

- 3.6. The submissions of JSWSL were largely upheld by the Commission (barring some ambiguities in the consumption data for units located in various places other than Dolvi). However, the Commission in its Order dated 4 May 2018 in Case No. 101 of 2017 (suo moto) stated the following:

*"... Based on the data submitted by MEDA, the Commission finds a shortfall against the cumulative RPO target to the extent of OA consumption. The Commission directs the OA Consumer to fulfil its target cumulatively for the period from FY 2010-11 to FY 2013-14 by the end of FY 2018-19."*

No opportunity was granted by the Commission or MEDA to the Petitioner to explain its compliance with the RPO targets for FY 2010-11 to FY 2013-14 and it seems that the Commission and MEDA omitted to consider the impact of the Order dated 12 April 2018 issued in Case No. 134 of 2013.

- 3.7. JSWSL vide its letter dated 21 November 2018 to MEDA submitted documents relating to fulfilment of JSWSL's RPO for Dolvi unit. However, MEDA did not respond to it till date.
- 3.8. The Hon'ble Appellate Tribunal for Electricity (APTEL) on 2 January 2019 in the matter of JSW Steel Limited v. Tamil Nadu Electricity Regulatory Commission (TNERC) in Appeal No. 278 of 2015 and 293 of 2015, reiterated the principles laid down in the Case of Century Rayon v. MERC (Appeal No. 57 of 2009):

*"...  
40. It is manifest on the face of the judgment, as stated supra, the Captive consumers having cogenerating plants cannot be fastened with the obligation to procure electricity from renewable energy sources, as that would defeat the object of section 86(1)(e) of the*

Electricity Act, 2003 and cogenerating plants have to be treated at par with renewable energy generating plants for the purpose of RPO obligations. It is pertinent to note that the aforesaid judgment has been consistently followed by the Tribunal in several cases e.g. *Emami Paper Mills Ltd. Vs. Odisha Electricity Regulatory Commission* in Appeal No. 54 of 2012 dated 30.01.2013 reported in 2013 SCC Online APTEL 23 : [2013] APTEL 74 (Para 5, paras 38 to 40, which reads hereunder:

“5. In the light of the rival contentions, the following question may arise for consideration: :”*Whether the Appellant, the co-generator is under a legal obligation to purchase power from the renewable sources of energy for meeting the Renewable Purchase Obligation of its captive load?”*

.....

38. As laid down by this Tribunal in *Century Rayon* case, we reiterate that the mere use of fossil fuel would not make cogeneration plant as a conventional plant. The State Commission cannot give its own interpretation on this aspect which is not available in the Regulations and which is against the ratio and the interpretation of provision given in the judgment by this Tribunal.

.....

40. Summary of our findings: i) This Tribunal in its judgment in Appeal No. 57 of 2009 has specifically observed that the intention of the legislature is to clearly promote the cogeneration also irrespective of the nature of the fuel used and fastening of the obligation on the co-generator would defeat the object of Section 86(1)(e). the Tribunal also mentioned in the above judgment that the conclusion in Appeal No. 57 of 2009 of being generic in nature, would apply to all the co-generation based captive consumers who may be using any fuel. Therefore, reasoning given by the State Commission for distinguishing the judgment of this Tribunal, which is binding on the State Commission, is wrong.

ii) The definition of the obligated entity would not cover a case where a person is consuming power from co-generation plant.

iii) The State Commission by the impugned order, in order to remove difficulties faced by the obligated entities, has clarified that the obligation in respect of co-generation can be met from solar and nonsolar sources but the solar and non-solar purchase obligation has to be met mandatorily by the obligated entities and consuming electricity from the co-generation sources shall not relieve any obligated entity. When such relaxation has been made, the same relaxation must have been allowed in respect of consumers meeting electricity consumption from captive Co-generation Plant in excess of the total RPO Obligations. Failure to do so would amount to violation of Section 86(1)(e) of the electricity Act, which provides that both cogeneration as well as

*generation of electricity from renewable source of energy must be encouraged as per the finding of this Tribunal in Appeal No. 57 of 2009. Unfortunately the State Commission has failed to follow the judgment given by this Tribunal in Century Rayon case.”*  
*[Emphasis supplied]*

...  
43. ... *It is evident that only paragraph 45(II) of the judgment in Century Rayon Case has been set aside by the Full Bench judgment in its entirety. The effect of this being that the distribution licensee could not be compelled to procure electricity from fossil fuel based co-generation against its renewable purchase obligation. However, it has no effect on the finding in Century Rayon Case that a cogeneration based captive power plant cannot be fastened with Renewable Purchase Obligation irrespective of the nature of the fuel used for such cogeneration.*

...  
53. ... *Therefore, we hold that a co-generation facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003; an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision; and as long as the co-generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities.*

*54. In view of the facts and circumstances, as stated supra, we hold that, the Appellants herein, being co-generation plants, are not under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase obligation in the interest of justice and equity.*

...”

- 3.9. JSWSL vide letter dated 2 April 2019 to MEDA highlighted findings of APTEL Order dated 2 January 2019 in the matter of JSW Steel Limited v. Tamil Nadu Electricity Regulatory Commission (TNERC) in Appeal No. 278 of 2015 and 293 of 2015 and requested to take on record the APTEL’s finding and submit compliance report to the Commission.
- 3.10. Further, APTEL vide its order dated 9 April 2019, on similar issues, in Appeal No. 333 of 2016, M/S. JSW Steel Limited v. Karnataka Electricity Regulatory Commission (KERC) further examined the applicability of RPO to cogeneration plants and unambiguously held that the cogeneration plants (such as the one set up by JSWSL, albeit based on fossil fuel) cannot be fastened with any RPO so long as the cogeneration is in excess of the RPO. The relevant paragraphs of the order are reproduced herein below for ready reference:

“

*53. It is rightly pointed out by the counsel for the Appellant that, the judgment of the Hon'ble Apex Court actually covered co-generators as well has got some substance and it is highly unlikely that the Rajasthan Electricity Regulatory Commission, whose Regulations were under challenge before the Hon'ble Apex Court, would itself grant relief to the co-generators before it relying on the judgment of this Tribunal in Century Rayon case. Therefore, we hold that a co-generation facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003; an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision; and as long as the co-generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities.*

*54. In view of the facts and circumstances, as stated supra, we hold that, the Appellants herein, being co-generation plants, are not under a legal obligation to purchase power from renewable sources of energy in order to meet their Renewable Purchase obligation in the interest of justice and equity.”*

- 3.11. APTEL has held that no consumer owning and operating a CGP/CPP can be fastened with the RPO obligations so long as the electricity generated from the co-generation plant is in excess of the presumptive RPO obligation for the relevant year.
- 3.12. JSWSL issued another letter dated 2 May 2019 to MEDA reiterating the submission made in previous letters and the finding of APTEL's Order dated 9 April 2019 in Appeal No. 333 of 2017 and again requested to take on record the submissions made against RPO compliance of JSWSL Dolvi unit. Further, another letter was issued to MEDA on 27 July 2019 with same request.
- 3.13. JSWSL owns and operates two CPPs with an aggregate capacity of 67 MW (previously 60 MW). It is submitted that in accordance with Section 86(1)(e) of the Act and the decisions of the APTEL, JSWSL's cogeneration plants are to be treated on par with renewable energy and it is not liable to be fastened with any RPO targets so long as the said CPPs produce electricity in excess of the presumptive RPO targets specified in the RPO Regulations, 2010 and subsequent amendments or replacements thereto.
- 3.14. Further, in view of the fact that JSWSL owns and operates cogeneration CPPs of sufficient capacity, MEDA ought to have considered that JSWSL has no further obligation to meet RPO targets under Section 86(1)(e) of the Act since such obligation would defeat the object and purpose of the Act. Co-generators such as JSWSL ought not to be directed to purchase electricity from renewable energy sources if it has already generated and consumed

electricity from its co-generation based CPPs which is in excess of the applicable presumptive RPO targets for the relevant year.

3.15. In view of the submissions made hereinabove and the judgments of the APTEL, JSWSL is fully covered and exempt from the requirement to meet any RPO Targets in respect of its OA consumption at the Dolvi Unit for FY 2010-11 to FY 2013-14 and also for the subsequent years.

3.16. Despite repeated representations made by JSWSL citing the Order of the Commission in Case No. 134 of 2013 and the subsequent orders of the APTEL, MEDA has chosen not to respond to the requests regarding JSWSL's Dolvi Unit being in compliance with or exempt from the applicable RPO Regulations.

**4. MEDA in its reply dated 16 March 2020 has stated as under:**

4.1. Fossil fuel based co-generation plant is not recognized source of RE as per the list of approved RE sources by Ministry of New and Renewable Energy (MNRE). The generation from such project cannot be considered for fulfilment of RPO of obligated entities. Therefore, generation from fossil fuel based co-generation plant of JSWSL located at Dolvi cannot be used for RPO fulfilment of Conventional Open Access wheeled quantum of power by Dolvi steel plant unit of JSWSL.

4.2. Further, MERC RPO-REC Regulations is also applicable to Fossil Fuel based co-generation plant. Therefore, according to RPO-REC Regulations – 2016, fossil fuel based co-generation plant of JSWSL at Dolvi unit is liable for fulfilment of RPO obligation.

4.3. The Commission may direct JSWSL for fulfilment of RPO for their

- a. Energy generated from fossil fuel-based co-generation plant for the period applicable under RPO-REC Regulations 2016
- b. Conventional – Open access wheeled quantum of power for the period applicable under RPO-REC Regulations 2010 and 2016

5. At the e-hearing through video conferencing held on 11 August 2020, the representative of JSWSL reiterated its submissions in Petition and further stated that it is not challenging the RPO Regulation but suggesting that provisions of Regulations which are not consistent with provisions of the Electricity Act can be ignored by the Commission. MEDA reiterated its submissions in the Reply.

6. JSWSL, through its email dated 15 August 2020, made the following additional submissions:



- 6.1. MEDA, in its Reply, has submitted that fossil-fuel based CPPs are not renewable energy sources and therefore, not exempted from RPO. This argument has been comprehensively rejected by the APTEL since it has held that the exemption from RPO to cogeneration CPPs is available irrespective of the type of fuel used in such CPPs. MEDA has not controverted or disputed any other submission made by JSW in its Petition. In view of the aforesaid submissions, cogeneration plants such as the JSWSL cannot be fastened with any RPO so long as the cogeneration is in excess of the presumptive RPO.

### **Commission's Analysis and Rulings**

7. JSWSL had earlier approached the Commission in Case No. 134 of 2013 praying that the electricity produced and consumed by its cogeneration plants should meet/offset its corresponding RPO target and its group companies in respect of units located in Maharashtra, under the then applicable RPO Regulations. The Commission vide its Order dated 12 April 2018 in Case No. 134 of 2013 has held that JSWSL is exempt from RPO to the extent that it is consuming power from its fossil fuel-based Co-Generation CPP. However, on the issue of considering such power consumption for meeting its RPO against power sourced from OA sources, the Commission had ruled that it would consider this in the proceedings of RPO compliances initiated in Case No 101 of 2017.
8. The Commission in its Order dated 4 May 2018 in Case No. 101 of 2017, which was initiated in the matter of Verification of compliance of RPO targets by CPP Users and Open Access Consumers in FY 2010-11 to FY 2013-14, has analyzed the RPO compliance of 683 CPP Users and OA Consumers including JSWSL. The relevant excerpt from the Order is as below:

*"14) JSW Ispat Steel Ltd. Raigad Dist.*

.....

#### ***Consumer's Submission:***

*• JSW Steel Limited has responded to the letter sent to JSW Ispat Steel Ltd. vide letter dated 10 July 2017. In the letter, it is mentioned that JSW Steel has approached the Commission vide Case No. 134 of 2013 to adjudicate the RPO obligation for the relevant year wherein the Commission has reserved the Order after hearing the parties and has directed that no coercive action steps be taken during pendency of the proceedings.*

*• Copy of the Commission's Record of Proceeding reserving the Order and the Daily Order wherein "no coercive measures by MEDA during pendency of the case" was directed by the Commission on 20 February, 2014 is enclosed with the letter.*

#### ***Commission's View***

*The Commission in the Order in the Case cited above had stipulated that the Consumer is exempted from RPO only to the extent that it is itself consuming power from its grid connected fossil-fuel based Co-generation CPP as per the proviso to Regulation 11.3 of the RPO Regulations, 2010. MEDA has classified it under the OA Consumer category and the data provided corresponds to OA consumption. Based on the data submitted by MEDA, the Commission finds a shortfall against the cumulative RPO target to the extent of OA consumption. The Commission directs the OA Consumer to fulfill its target cumulatively for the period from FY 2010-11 to FY 2013-14 by the end of FY 2018-19.*

*However, the information shared by MEDA and the submissions made in this regard are inadequate to evaluate the RPO compliance of the entity with respect to its CPP consumption. Hence, the Commission directs the Consumer to submit the necessary information and documentary evidence for this period during the next RPO compliance verification proceedings.”*

In the above Order, the Commission notes that in terms of its earlier Order, JSWSL's consumption from its fossil fuel based co-generation plant was exempted from RPO. MEDA has classified JSWSL as Open Access consumer and reported shortfall in meeting RPO on energy consumed through OA sources. Therefore, the Commission directed JSWSL to fulfil its RPO target on OA energy cumulatively for the period from FY 2010-11 to FY 2013-14 by the end of FY 2018-19.

9. In the present Petition, JSWSL has contended that while passing the above Order, the Commission or MEDA had not given any opportunity to explain its compliance of RPO and Commission had not considered its Ruling in Order dated 12 April 2018. The Commission notes that these contentions of JSWSL are not correct as it has clearly taken on record its earlier Order while issuing Order dated 4 May 2018. Further, if JSWSL was aggrieved by that Order, it should have approached Commission earlier under appropriate provision of law. However, overlooking such conduct, based on contentions in the present proceedings, the Commission frames following issues for its consideration:
  - a. Can the applicable Regulations in force be ignored?
  - b. Can the electricity produced and consumed from the fossil fuel based co-generation plant meet /offset the corresponding RPO targets for OA category under RPO Regulations 2010?
  - c. What shall be the treatment to be meted out to such plants from 2016 onwards?

These issues are dealt with in the following paragraphs.

## 10. Issue No. A: Can the applicable Regulations in force be ignored?

- 10.1. The Commission notes that JSWSL, based on various APTEL Judgments, has mainly sought relief that it cannot be fastened with RPO as electricity generated from its captive co-generation plant is more than RPO requirement. For justifying its request, JSWSL has further argued that the Commission may ignore the provisions of RPO Regulations which are inconsistent with the provisions of the EA 2003 and grant relief sought by it.
- 10.2. In this regard, the Commission notes that although JSWSL has referred and relied on various APTEL Judgments dealing with captive fossil fuel based co-generation plants and applicability of RPO, it has not referred to recent Judgment of APTEL dated 28 January 2020 in Appeal No. 252 of 2018 (Century Rayon) wherein APTEL has dealt with similar contention i.e. Regulation can be ignored if it is inconsistent with the Act. Said Appeal was filed by Century Rayon challenging this Commission's Order rejecting request for exempting captive fossil fuel-based co-generation plant from RPO under MERC RPO Regulations, 2016. Relevant part of said APTEL Judgment is reproduced below:

*“26. From the above, it naturally follows that the statutory policy inherent in Section 86(1)(e) of Electricity Act 2003 expects the Regulatory Commissions to promote both “generation of electricity from renewable sources of energy” and also “cogeneration”. We mention the two in reverse order for better clarity and for removal of doubts, if any persist.*

*27. But then, the State Electricity Regulatory Commissions upon which the power and jurisdiction is conferred to frame and notify the Tariff Regulations, and also to “determine” the tariff for generation, supply, transmission, etc are expected by Section 86(4) to be “guided by” the National Electricity Policy, National Electricity Plan and Tariff Policy published by the Central Government in exercise of its enabling power under Section 3. **It is the submission of the counsel for MERC/Respondent No.1 that given the express exclusion by the proviso to para 6.4(i) of the Tariff Policy 2016 (quoted earlier) it was obliged to take away the exemption by omitting the proviso to Regulation 11.3 while notifying MERC (RPO) Regulations 2016.** It is also the argument of the counsel for the MERC that the National Electricity Policy, National Electricity Plan and Tariff Policy issued by the Central Government in exercise of its power under Section 3, as indeed the Tariff Regulations framed and notified by the Electricity Regulatory Commissions (ERCs) under Section 61 read with Section 181 of the Electricity Act, 2003 are in the realm of subordinate legislation and, therefore, beyond the purview of permissible challenge before this Tribunal under Section 111, the controversy raised being not a “dispute” within the*

meaning of the expression used with reference to adjudicatory role of SERCs under Section 86(1)(f).

.....

**29. On the other hand, the counsel for the Appellant was at pains to claim that the appeal does not challenge the Regulations, the relief claimed being possible to be granted “without amendment to the Regulations”, it also being his argument that any regulation which is “not consistent” with the Electricity Act must be “read down”. It was his submission that reliance placed on Tariff Policy, 2006 is erroneous, untenable and though conceding that it is “subordinate legislation”, it could be ignored because of inconsistency with Section 86(1)(e) as interpreted in the earlier decision of 2010 in Century Rayon (supra). For persuading us to take this course, the Appellant would press in aid the decisions of the Hon’ble Supreme Court in the cases of Bhartidasan University and Another v All-India Council for Technical Education [2001 (8) SCC 676] and Shree Bhagwati Steel Rolling Mills v Commissioner of Central Excise & Anr [(2016) 3 SCC 643].**

.....

**33. On careful scrutiny, we do find some inconsistency between the provision contained in Section 86(1)(e) of the Electricity Act, 2003, as interpreted by this Tribunal in 2010 decision in the matter of Century Rayon (supra) and the Regulation 11.3 of MERC (RPO) Regulations, 2016 on account of the then existing proviso in the corresponding part of the previous regulations having been omitted. By the said change, a co-generator must also satisfy the RPO targets the exception being the co-generation process based on generation of electricity from renewable sources of energy. As was highlighted in 2010 decision of this Tribunal in Century Rayon (supra), the legislature has considered both the generation of electricity from renewable sources of energy and co-generation (of electricity) as areas that require to be promoted. We have briefly set out justification for legislative policy. Both these sources of generation of electricity merit impetus on account of benefits that the society as a whole derives from them. There seems to be a strong case made out for arguing that one area meriting promotion cannot be at the cost of other area equally meriting similar promotion. To do otherwise would defeat the larger objective of such policy and may not be an advisable approach.**

.....

**35. The prerogative to formulate, notify and enforce the National Electricity Policy, National Electricity Plan and Tariff Policy is within the domain and prerogative of the Central Government in terms of Section 3 of the Electricity Act, 2003. It is not for such adjudicatory authority as this Tribunal to sit in judgment on correctness of “policy” which subject is delineated and reserved for the executive branch of the State, also for the reason that this Tribunal does not have any advisory role. The State Electricity Regulatory Commission carries and discharges multifarious responsibilities and functions, one of which – under Section 86(1)(f) – is to “adjudicate upon the disputes”. In that sense of the frame work, the Electricity Regulatory Commission is an adjudicatory forum whose**

*decisions are subject to correction in appeal by this Tribunal. But, it has to be remembered that State Electricity Regulatory Commissions, as indeed the Central Electricity Regulatory Commission, also perform (besides others) legislative functions. To frame and notify Regulations is a legislative function. The Regulations framed by the State Electricity Regulatory Commissions in exercise of the power vested in them by Section 181, are in a nature of subordinate legislation and thus have the force of law. It is well settled that challenge to the vires of the Regulations is not permitted before this Tribunal, it being a subject of judicial review, which power is vested elsewhere. For this, we only need to quote the decision of the Hon'ble Supreme Court reported as PTC India Limited v Central Electricity Regulatory Commission (2010) 4 SCC 603.*

.....  
**36. We are not impressed by the submissions that the modified Regulations, 2016 being in teeth of the 2010 decision of this Tribunal in the case of Century Rayon (supra), the modification brought about by omission of the proviso existing in the preceding regulations be ignored or modified so as to have clause (b) "read down". The decision of an adjudicatory authority cannot impinge upon power and prerogative of the statutory authority vested with the competence to lay down modified State Policy. The State Regulatory Commission while framing the regulations in discharge of its functions under Section 86 is statutorily "guided by" the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3. If the said Policies, or Plan or the Regulations framed by the State Electricity Regulatory Commission under such guidance, fall foul of the letter and spirit of the statutory scheme, the validity can be challenged but only by way of judicial review before the appropriate Court of competence, definitely not before this Tribunal.**

**37. We are not persuaded in the present case to read down the modified regulations. So long as the modified Regulations of 2016 stand, no relief can be granted to the Appellant in terms of prayer clauses (a) & (b) in the appeal as quoted above."**

10.3. Thus, after making observations that removal of exemption of RPO to fossil fuel-based co-generation plants is inconsistent with its earlier judgments in Century Rayon matter, Hon'ble APTEL has also observed that said withdrawal of exemption in 2016 Regulations was based on Tariff Policy 2016 notified by the Central Government. The APTEL has held that such policy framed under the provisions of the Electricity Act or Regulations framed by the appropriate Commission, if it is inconsistent with the statutory provisions, can be challenged before appropriate court of competence. Provisions of Regulations which are in force, need to be complied with. Said Judgment of APTEL has apparently been challenged before the Hon'ble Supreme Court in Civil Appeal No. 2714 of 2020, which is pending and no stay has been granted in the matter.

10.4. In view of the above quoted findings of the APTEL, the Commission cannot accede to the request of JSWSL to ignore any provision of RPO Regulations which are in force.

**11. Issue No. B: Can the electricity produced and consumed from the fossil fuel based co-generation plant meet /offset the corresponding RPO targets for OA category under RPO Regulations 2010?**

11.1. In its initial Petition filed under Case No. 134 of 2013, JSWSL had prayed that the electricity produced and consumed from its co-generation plants shall offset the corresponding RPO target of JSWSL and its group companies in respect of units located in Maharashtra. JSWSL in the present matter has requested the Commission to direct MEDA to issue a certificate of compliance or certificate of exemption with respect to the applicable RPO Regulations for FY 2010-11 to FY 2013-14 and also for the subsequent years since its consumption from Dolvi cogeneration plants is in excess of the presumptive RPO Targets (to the extent of OA consumption) for the relevant years ending up to 31 March 2019. For this JSWSL has relied upon APTEL judgments dated 2 January 2019 (*JSW Steel Ltd Vs TNERC*) and dated 9 April 2019 (*JSW Steel Limited Vs KERC*) which inter alia states that no consumer owning and operating a CGP/ CPP shall be fastened with the RPO so long as the electricity generated from the co-generation plant is in excess of the presumptive RPO for the relevant year.

11.2. MEDA, in its reply dated 16 March 2020 has submitted that since the Fossil fuel based co-generation plant is not recognized source of Renewable Energy as per the list of approved RE sources by MNRE, generation from such project cannot be considered for fulfilment of RPO of obligated entities.

11.3. The Commission notes that under MERC RPO Regulations, 2010, Eligible Renewable Energy Sources for meeting RPO has been listed as follows:

*“4.1 For the purpose of this Regulation, energy generation from all types of renewable energy sources as recognised or approved by the MNRE, shall be considered.*

*Provided that any new technology could be qualified as ‘renewable’, only after the State Commission has approved the technology based on the approval of the MNRE.”*

.....

*7.2 Every ‘Obligated Entity’ may meet its RPO target by way of own generation or procurement of power from RE developer or by way of purchase from other licensee or by way of purchase of renewable energy certificate or by way of combination of any of the above options.*

*Provided further that procurement of RE power generated within the State by Distribution Licensee at rate other than rate approved by the State Commission directly from generator or from trader shall not be considered as eligible quantum for fulfilment of renewable purchase obligation of such distribution licensee.*

Thus, in terms of MERC RPO Regulations 2010, obligated entity has to procure energy from Renewable Energy sources as recognized or approved by the MNRE or purchase RECs for meeting its RPO.

- 11.4. The Commission further notes that during the proceedings of Case No. 134 of 2013, JSWSL had admitted that its co-generation plant is not a RE source. Relevant part of said Order is as follows:

*“12. ....During the hearing, JSWSL made a submission on various promotional measures available under the Energy Conservation Act, 2001 for its technology deployed at Dolvi Unit. Further, JSWSL submitted that the MNRE approval for the same is awaited. JSWSL further clarified that it is not claiming its technology at Dolvi Unit to be treated as a RE source. However, in order to promote such a technology, JSWSL prayed for a suitable regulatory framework for the consideration of the electricity generated from such Plants to offset the RPO of its group companies.”*

Thus, JSWSL’s main contention is that its co-generation power should be allowed to be used for meeting RPO of its Group Companies.

- 11.5. As stated earlier, in terms of Regulations only RE sources approved by MNRE are eligible for meeting RPO. Admittedly, JSWSL’s co-generation is not a RE Source. Further, as stated in paras 10.2 and 10.3 above, the Regulations which are in force need to be implemented in true letter and spirit. Hence, the Commission cannot allow JSWSL to use its fossil fuel-based co-generation for meeting RPO on OA energy consumed by its group companies.
- 11.6. Only relief which JSWSL can seek and which has already been granted by this Commission vide Order dated 12 April 2018 is to get exemption from RPO on energy consumed from co-generation plant during the applicability period of MERC RPO Regulations, 2010.

**12. Issue No. C: What shall be the treatment to be meted out to such plants from 2016 onwards?**

- 12.1. Based on Tariff Policy 2016 notified by the Central Government, proviso exempting RPO on energy consumed from grid connected fossil fuel based co-generation plants was removed in the MERC (Renewable Purchase Obligation, Its Compliance and Implementation of REC

Framework) Regulations, 2016, notified on 30 March, 2016. Hence, fossil fuel based co-generation plants are also subjected to RPO regime from FY 2016-17 onwards.

12.2. In order to keep records straight, the Commission notes that provision of imposing RPO targets on fossil fuel based co-generation plants under MERC RPO Regulations 2016 has been challenged before the Hon'ble Bombay High Court in Writ Petition (L) No. 2884 of 2018 which is sub judice before the High Court.

12.3. Under these circumstances wherein validity of provisions under Regulations has been challenged before High Court, in order to protect interest of fossil fuel based co-generation plants, the Commission vide its Order dated 22 May 2019 in Case No. 68 of 2019 has held that till the time the Writ Petition is decided by the High Court, the captive users will have option of depositing the amount equivalent to REC Floor Price of the shortfall units and further on year to year basis to meet its RPO, with the MEDA. The relevant excerpts from the Order are as below:

*“11. In the light of the above-mentioned facts including the provisions of the Regulations and that since no stay is granted by the High Court, the Commission is of the opinion that the Petitioner is bound to follow the prevailing Regulations. Since the Commission has allowed other obligated entities to meet its obligation by March 2020, the Commission is allowing similar concession to the fossil fuel based cogeneration plants to fulfill its cumulative RPO targets by March 2020.*

*12. Alternately, as highlighted in para 10 above, the Commission will be initiating the RPO Compliance verification process for FY 2014-15 to FY 2016-17 for CPP users and OA Consumers. After crystallization of the verification process is completed by the Commission, the shortfall (if any) will be ascertained, and the petitioner shall deposit the amount equivalent to the REC floor prices of the shortfall units and further on year to year basis to meet its RPO, with the MEDA till such time the writ petition is decided by the High Court. The Commission opines that this alternative option will address the concerns of the petitioner about the possible hardship in case it succeeds in the High Court”*

12.4. JSWSL can avail the above option for meeting its RPO for FY 2016-17 onwards till the time Writ Petition is decided by the High Court.

13. Hence, the following Order.


### **ORDER**



1. The Case No. 335 of 2019 is rejected.
2. As already allowed in Order dated 12 April 2018, power consumed by JSW Steel Limited from its fossil fuel-based Co-Generation Captive Power Plant is exempted from Renewable Purchase Obligation for the period applicable under MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificates Framework) Regulations, 2010.
3. JSW Steel Limited shall comply with the Renewable Purchase Obligation targets as notified by the Commission under MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificates Framework) Regulations, 2016 and MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificates Framework) Regulations, 2019 for their respective periods. In the alternative, JSW Steel Limited can avail Option as per para 12.3 and 12.4 above.

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I.M. Bohari)  
Member

  
(Abhijit Deshpande)  
Secretary

