



**TELANGANA ELECTRICITY REGULATORY COMMISSION**  
'Vidyut Niyantran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045

**R.P.No.1 of 2024**

**in**

**O.P.No.22 of 2023**

**Dated 25.09.2024**

**Present**

Sri. T. Sriranga Rao, Chairman  
Sri. M. D. Manohar Raju, Member (Technical)  
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s ITC Limited,  
Paperboards & Specialty Papers Division,  
Divisional Headquarters, ITC Bhadrachalam House,  
106 Sardar Patel Road, Secunderabad 500 003.

... Petitioner

**AND**

Telangana State Load Dispatch Centre,  
Vidyut Soudha, Khairatabad,  
Hyderabad 500 082.

... Respondent

The review petition came up for hearing on 01.07.2024. Sri. Gopal Chowdary, Advocate on behalf of Sri. Challa Gunaranjan, counsel for petitioner has appeared on 01.07.2024. Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondent has appeared on 01.07.2024. The matter having stood over for consideration to this day, the Commission passed the following:

**ORDER**

M/s. ITC Limited (review petitioner) has filed a review petition under Section 94 (1) (f) of the Electricity Act, 2003 (Act) seeking review of the order dated 27.03.2024 passed in O. P. No. 22 of 2023 so far as the petitioner is concerned, with regard to compliance of Renewable Power Purchase Obligation (RPPO). The averments / grounds raised by the review petitioner are as extracted below:

- a. The impugned order requires to be reviewed as it suffers from serious errors apparent from record and also in the interest of justice.
- b. The written objections of the petitioner dated 20.09.2023 and the oral submissions of the petitioner before the Commission on 25.09.2023 are purportedly summarized in paragraphs 28 to 33 of the impugned order. There is no discussion, consideration or decision in the impugned order with respect to the case of the petitioner.
- c. In paragraph 41 of the impugned order it is stated that a decision will be taken based on the judgements of the Hon'ble High Court and Hon'ble APTEL. It is not at all clear from the impugned order as to whether the said statement applies to, or does not apply to, the petitioner's case. In any event, it is clear that the impugned order does not decide the cases of the entities purported to be referred to in the said paragraph 41.
- d. Even though there is no discussion, consideration or decision with respect to the petitioner's case, the petitioner is shown as "not complied" with respect to solar RPPO obligations for FYs 2018-19, 2019-20, 2020-21 and 2021-22 in Annexure-V to the impugned order read with paragraphs 67, 69 and 70 of the impugned order. In the complete absence of a speaking order with respect to the petitioner's case, the Commission could not have held that the petitioner has not complied with the solar RPPO obligations and/or that the petitioner has any such obligations in the facts and circumstances of the petitioner's case. This is clearly a grave error apparent from the record and a grave miscarriage of justice.
- e. In terms of paragraph 71 of the impugned order, all the obligated entities who have not fulfilled the RPPO obligation, purportedly with reference to Annexure-V of the impugned order, are required to deposit the amount at the rate of the forbearance price within a period of three months from the date of the impugned order. As there has been no discussion, consideration and decision of the petitioner's case in the impugned order, the direction to the petitioner to deposit the amount is an error apparent from the record and a grave miscarriage of justice.
- f. Paragraphs 72 and 75 of the impugned order purports to levy and/or impose penalties. As there has been no speaking order with discussion, consideration and decision with regard to the Petitioner's specific case, there cannot be any

penalties levied or imposed on the Petitioner. The impugned order therefore suffers from grave error apparent from the record and grave miscarriage of justice.

g. Penalties are penal provisions which may not be ordered by any general order. Painting all cases with the same brush for levy of penalty is a travesty of justice and unknown to law. Each case for penalty u/s 142 has to be separately and specifically adjudicated after due notice and hearing on a case-to-case basis. The fullest opportunity has to be given to the alleged delinquent to present his defence. Penalty may only be imposed after all ingredients necessary for a penal measure, including but not limited to *mens rea*, is established beyond reasonable doubt. The penalties as sought to be imposed by the impugned order are vitiated by arbitrariness and non-compliance with the established principles of penal law. They are therefore grave errors apparent from the record and grave miscarriage of justice.

h. For all the above grounds and reasons, and for such other grounds and reasons as may be advanced during the course of proceedings, the impugned order requires to be reviewed and set aside so far as the petitioner is concerned.

2. The review petitioner has sought the following prayer in the review petition.

*“For the above reasons and grounds, and on such other reasons and/or grounds that may urged during the course of proceedings, the Hon’ble Commission may be pleased to –*

- (a) review the order dated 27.03.2024 passed in O.P.No.22 of 2023 so far as the petitioner is concerned; and*
- (b) set aside the impugned order so far as the petitioner is concerned;”*

3. The respondent has filed its counter affidavit and stated as extracted below:

(a) It is stated that the subject issue is governed under Commission’s order dated 27.03.2024 passed in O. P. No. 22 of 2023 with respect to RPPO compliance for FYs 2018-19 to 2021-22.

(b) It is stated that review petitioner is a captive power plant of total capacity of 172.187 MVA to meet the requirements of the industry and has a CMD of 15 MVA with TGNPDCL. As per TGERC RPPO Regulation No. 2 of 2018, the review petitioner is a RPPO obligated entity as it is a captive consumer whose plant is connected to grid and plant is based on conventional fossil fuel. Being

a RPPO obligated entity review petitioner has to fulfil the RPPO targets as specified in TGERC RPPO Regulation No.2 of 2018.

(c) It is stated that the review petitioner has claimed that the plant self-consumption includes consumption from co-generation, including both from coal as well as from black liquor and as the consumption is from cogeneration, which is more than the TGERC RPPO target, the review petitioner claims that it is not at all an obligated entity to meet the RPPO.

(d) It is stated by the respondent that

i. In reply to paragraph (b): It is stated that the petitioner submissions in paragraphs 28 to 33 of the O.P.No.22 of 2023, dated 27.03.2024, as per the meeting held on 18.01.2021 at TGERC and Commission directed the TGSLDC to conduct the meeting with obligated entities regarding discrepancies in their energy consumptions. Accordingly, a meeting was conducted on 19.01.2021 with these entities which include M/s ITC Limited as one of the entities. M/s ITC Limited attended the meeting and had not accepted the TGSLDC computation and addressed TGERC for clarification on 29.01.2021. Hence the petitioner claiming that there was no discussion, consideration, or decision with respect to the order is invalid.

ii. The petitioner submissions on "*consideration of the energy consumed as cogeneration.*" was also submitted to the Commission on 29.01.2021. Further it is stated that based on the submissions of entities and TGSLDC report, Commission has issued an order on 09.03.2021 vide O. P. No. 31 of 2020 "*in the matter of Suo-Moto determination of compliance of Renewable Power Purchase Obligation (RPPO) of obligated entities for FY 2018-19*".

iii In reply to paragraph (c): It is stated that in the paragraph Nos. 18 to 40 of O. P. No. 22 of 2023, dated 27.03.2024, that certain entities submissions were that there were pending cases in Hon'ble APTEL/ High court were discussed for their RPPO compliance through co-generation/WHR based on which the Commission view vide para 41 was mentioned as below:

*"Since petitions are pending before the Hon'ble High Court and the Hon'ble APTEL, the matter is sub judice and the decision will*

*be taken based on the judgments of the Hon'ble High Court and Hon'ble APTEL"*

On 27.05.2024, the Commission has passed an order duly mentioning the error that Para 41 may be read as

*"Since petitions are pending before the Hon'ble High Court and Hon'ble APTEL, the matter is sub-judice and a decision will be taken based on the judgements of the Hon'ble High Court and Hon'ble APTEL. TSSLDC is directed not to collect either the amount as per the clause 8.1 of the regulation or penalty as per the clause 8.2 of the regulation till the cases are disposed by the Hon'ble High Court and Hon'ble APTEL".*

It is further to be noted that the Commission order vide O.P.No.22 of 2023, passed on.27.03.2024 whereas M/s ITC Limited has filed a review petition on O. P. No. 22 of 2023 before the Commission in the month of May 2024. As M/s ITC Limited has not filed any petition before Hon'ble High Court and Hon'ble APTEL, prior to the Commission's order in O.P.No.22 of 2023. Hence paragraph 41 of the order in O.P.No.22 of 2023, dated 27.03.2024 is not applicable to the petitioner.

iv In reply to paragraph (d): It is stated that Commission in the order vide in O. P. No. 31 of 2020, dated 09.03.2021 directed TGSLDC to re-compute the RPPO compliance for FY 2018-19 for all obligated entities which consume electricity through captive cogeneration plant or captive cogeneration plant using WHR and submit the relevant details of such computation along with the report on the status of compliance of RPPO for the FY 2019-20.

In view of the above TGSLDC addressed TGNPDCL on 19.04.2021 to furnish the details of plant energy consumption and cogeneration energy consumption. On 06.08.2021, TGNPDCL furnished the report in which no clarification was received on consumption. Hence, the meeting was conducted on 17.06.2022 between TGTRANSCO, TGDISCOM and M/s ITC Limited officials and it was decided in the meeting to reinspect M/s ITC Limited. The TGNPDCL submitted the inspection report and re-computation to the Commission on 14.02.2023 duly mentioning that

*"As per MOP order, dated. 06.11.1996, M/s ITC is not meeting qualifying requirements for co-generation plants. The same was informed to M/s ITC Limited on 14.03.23 and requested to fulfil*

*the RPPO Obligation as per TSERC, RPPO Regulation ... .. ”*

In view of the above it can be concluded that the ‘*not complied*’ decision was taken after several meetings and inspections. Hence the petitioner's claim of no discussion, consideration or decision is not an error and a miscarriage of justice.

- v In reply to paragraphs (e) and (f): It is stated that based on the points mentioned in paragraph (d), the Commission had directed depositing the amount at the rate of forbearance price within the period of three months from the date of the order and also imposed penalty with respect to the shortfall units mentioned in Annexure-V of the order.
  - vi In reply to paragraph (g): It is stated that based on the final report from the State Agency, the Commission has initiated the *Suo Moto* proceedings for determination of compliance of RPPO of obligated entities for FY 2019-20 (including the shortfall of FY 2018-19), FY 2020-21 (including the shortfall of FY 2018-19 & FY 2019-20), FY 2021-22 (including the shortfall of FY 2018-19, FY 2019-20 & FY 2020-21) and accordingly issued the public notice on 30.08.2023 by placing the notice in TGERC website. Further vide letter dated 02.09.2023 the Commission directed the TGSLDC to send the notices to all the obligated entities individually through post or through email. Accordingly, TGSLDC served the notices to individual obligated entities.
  - vii After receipt of objections/suggestions, the Commission held the public hearing on 25.09.2023 at TGERC Court Hall. Based on the above discussions, the Commission passed an order in O.P.No.22 of 2023, on 27.03.2024. Hence the petitioner's claim of no discussion, consideration or decision is not an error and a miscarriage of justice.
  - viii In reply to paragraph (h): It is stated that in view of all the above reasons, the respondent's decision to levy charges based on the shortfall units and penalty imposed with respect to TGERC order O.P.No.22 of 2023 is legal and in accordance with law.
- e. In the light of aforesaid facts and circumstances, the respondent has prayed that the Commission may be pleased to dismiss the review petition.
4. The Commission has heard the parties to the present review petition and also

considered the material available to it. The submissions on the hearing date are noticed below, which are extracted for ready reference.

Record of proceedings dated 01.07.2024:

*'... .. The advocate representing the counsel for review petitioner stated that the issue is with regard to specific observations of the Commission in the order under review. Moreover, the order passed by the Commission had specified the penalty without even giving an opportunity to the entities which have not complied with the regulation. Also, it is stated that imposing penalty cannot be done across the board on all the affected entities which are not complied with the regulation. Imposing penalty would depend on each case and each of the respective facts and circumstances after putting such entity on notice as to the liability towards such penalty. It is also stated that in the Commission itself had issued a corrigendum in the matter stating that the order is not applicable to the matters where cases are pending before the superior fora. In that view of the matter, levying penalty and taking decision thereof does not arise. Accordingly, the advocate representing the counsel for review petitioner stated that the review can be disposed of on two grounds, namely, (a) there is no penalty as there is no decision and (b) quantum of penalty will be decided after the decision of the court of law on the appeals.*

*The representative of the respondent stated that the Commission had already clarified the position and respondent had nothing more to add in the matter. As such, the Commission may consider and pass appropriate orders on the basis of counter affidavit. Having heard the parties, the review petition is reserved for orders.'*

5. As per RPPO Regulation No.2 of 2018, a captive consumer who owns a grid connected Captive Generating Plant based on conventional fossil fuel and consumes electricity generated from such plant for his own use is an Obligated Entity. Every Obligated Entity has to fulfil the RPPO as provided in Clause (3) of Regulation No.2 of 2018, which is reproduced below for reference.

3. *Renewable Power Purchase Obligation (RPPO)*

3.1 *Every Obligated Entity shall purchase from Renewable Energy Sources a minimum quantity (in kWh) of electricity expressed as a percentage of its total consumption of energy, during FY 2018-19 to FY 2021-22 as specified in this table below:*

<b>Year/RPPO</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
Solar	5.33	5.77	6.21	7.10
Non-solar	0.67	0.73	0.79	0.90
<b>TOTAL</b>	<b>6.00</b>	<b>6.50</b>	<b>7.00</b>	<b>8.00</b>

*Provided further that the obligation will be on total consumption of electricity by an Obligated Entity excluding consumption met from hydro sources of power other small-hydel sources of power.*

6. It is a known fact that review petitioner is a captive user and owns a grid connected captive generating power plant of total capacity of 172.187 MVA and

consumes electricity generated from its captive plant to meet the requirements of its industry and has a CMD of 15 MVA with distribution licensee viz., TGNPDCL.

7. Firstly, the Commission in its order dated 09.03.2021 in O.P.No.31 of 2020 while deciding the matter *Suo Moto* on compliance of Renewable Power Purchase Obligation (RPPO) by the obligated entities for FY 2018-19 held that in case of obligated entities having captive co-generation plant or captive co-generation plant using Waste-Heat Recovery (WHR) [*where M/s ITC Ltd., i.e., review petitioner, was One (1) among the others*] directed TGS LDC to re-compute the RPPO compliance for FY 2018-19 and submit the relevant details of such computation along with the report on the status of compliance of RPPO for FY 2019-20. Accordingly, TGS LDC submitted a consolidated report on 08.09.2021, whereas the Commission decided to take up compliance of RPPO at once for both the years i.e., for FY 2019-20 and FY 2020-21. Later on, the Commission decided to carry forward the shortfall of RPPO up to FY 2020-21 and permitted the obligated entities to purchase shortfall REC certificates up to 31.03.2022 and also decided to take up the matters on compliance of RPPO together for FY 2019-20, FY 2020-21 and FY 2021-22. As directed by the Commission vide letter dated 05.12.2022, TGS LDC has issued individual notices to all the obligated entities for their comments, if any, duly furnishing the details of calculation sheets. As contended by respondent (TGS LDC) the following are the date-wise correspondence made among TGS LDC, TGNPDCL and the review petitioner:

- On 19.04.2021, TGS LDC addressed TGNPDCL to furnish the details of plant energy consumption and co-generation energy consumption.
- On 06.08.2021, TGNPDCL furnished the report in which no clarification was given on consumption.
- On 17.06.2022, a meeting was conducted among TGS LDC, TGNPDCL and M/s ITC Ltd., in the meeting it was decided to reinspect the Plant.
- On 14.02.2023, TGNPDCL submitted inspection report to TGS LDC mentioning that M/s ITC Ltd., is not meeting qualifying requirements for co-generation plant as per MOP order dated 06.11.1996.
- On 14.03.2023, TGNPDCL informed the same to M/s ITC Ltd., and requested to fulfil RPPO in compliance with Regulation No.2 of 2018.

8. TGS LDC vide letter dated 05.08.2023 has submitted final consolidated report on RPPO compliance for FY 2019-20, FY 2020-21 and FY 2021-22. The consolidated report reveals the following year-wise shortfall of Solar RPPO in case of review petitioner:



FY	HTSCNo.	Total Energy Consumption through Open Access and/or Captive consumption during FY	Solar RPPO Obligation					Non-Solar RPPO Obligation				
			Solar RPPO obligation to be complied with	Shortfall carried forward	Solar RPPO met through consumption from Solar Generators	No. of Solar RECs submitted/ Self retention	Balance Solar RPPO to be fulfilled after carrying forward of shortfall of previous year	Non-Solar RPPO obligation to be complied with	Shortfall carried forward	Non-Solar RPPO met through consumption from Non-Solar Generators	No. of Non-Solar RECs submitted/ Self retention	Balance Non-Solar RPPO to be fulfilled after carrying forward of shortfall of previous year
A	B	C	D=CxSolar RPPO%	E	F	G	H=E+E-F-G	I=CxNon-Solar RPPO%	J	K	L	M=H-J-K-L
2018-19	RRE318	530902.00	28297.08	0.00	0.00	0.00	28297.08	189.59	0.00	31720.00	0.00	0.00
2019-20	RRE318	553740.00	31950.80	28297.08	0.00	0.00	60247.87	4042.30	0.00	38051.00	0.00	0.00
2020-21	BKM011	528670.00	32830.41	60247.87	0.00	0.00	93078.28	4176.50	0.00	0.00	0.00	4176.50
2021-22	BKM011	579967.11	41177.66	93078.28	0.00	0.00	134255.95	5219.70	4176.50	46197.66	0.00	0.00

Based on the final report the Commission has initiated *Suo Motu* proceedings for determination of compliance of RPPO of obligated entities for FY 2018-19 to FY 2021-22 and disposed the matter vide its order dated 27.03.2024 in O. P. No. 22 of 2023 [impugned order].

9. Review petitioner has sought review of the order claiming that it is not at all an Obligated Entity for complying with RPPO as it's a co-generation plant and its fuel for generation includes both coal (fossil fuel) as well as from black liquor (renewable energy). It is noticed from the submissions of the respondent that respondent along with the transmission company and distribution company have informed the review petitioner that it is not meeting the qualifying requirements for co-generation plants. In view of this fact and observations of the Commission the impugned order do not require any consideration/ modification by way of a review.

10. The Commission while considering the submissions of the review petitioner in the impugned *Suo Motu* proceedings had further noted the fact that certain Obligated Entities have approached the Hon'ble High Court as well as the Hon'ble Appellate Tribunal for Electricity with regard to their status as co-generation plants and hence directed TGS LDC at paragraph (41) not to collect either the amount as per clause 8.1 of the Regulation or penalty as per clause 8.2 of Regulation till the cases are disposed.

11. Review petitioner sought to rely on the clauses in Regulation No.2 of 2018 seeking review on the ground that penalty is onerous as the petitioner's generation capacity is a co-generation plant. It is also contended that penalties and penal provision which may not be ordered by any general order, penalties sought to be imposed are vitiated by arbitrariness and non-compliance with the established principles of penal law.

12. The Regulation No. 2 of 2018 being Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates)

Regulations, 2018, wherein clause 8 stipulates the following-

8. **Consequences of default**

8.1 *If the obligated entity does not fulfil the RPPO as provided in Clause (3) of this regulation during any year, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by the State Agency, such amount on the basis of the shortfall in units of the RPPO and the Forbearance Price decided by the Central Commission;*

*Provided that the fund so created shall be utilised in the manner as may be specified by the Commission either through general or special order.*

8.2 *Where any obligated entity fails to comply with the obligation prescribed in clause (3) of this regulation, it shall, in addition to the compliance of the directions under clause 8.1 above, be liable for penalty as may be decided by the Commission under section 142 of the Act, 2003.*

8.3 *For this purpose, the Commission may initiate proceedings either suo moto or on a representation made by any of the affected parties including but not limited to the State Agency.*

8.4 *Such proceedings shall be in accordance with the Conduct of Business Regulation, 2015 of the Commission.*

**Section 142 of the Act**

142. **Punishment for non-compliance of directions by Appropriate Commission.** *In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”*

13. The above provisions clearly state that entities failing to comply with the Regulation due to default must contribute to a separate fund managed by the State Agency, at forbearance prices decided by the Central Commission (CERC) for any shortfall in RPPO units. Further, such entities are subject to penalties under Section 142 of the Electricity Act, 2003, which are in addition to any other penalties under the Electricity Act, 2003. Thus, the penalties in question are imposed within the provisions of the Electricity Act, 2003 and Regulation No.2 of 2018, by serving individual notices to the Obligated Entities, giving adequate opportunity for the affected parties to present their case and contest the penalties ensuring compliance with principles of natural justice. Further, the penalties are applied consistently across similar cases, ensuring fairness and avoiding any arbitrary application. Therefore,

there is no error in the Commission's order requiring the deposit of funds and imposing penalties, as outlined in paragraphs 71 to 75 of the impugned order. Based on these facts and the Commission's observations, no review of the order is warranted.

14. The review petitioner cannot claim that it is being unfairly penalized without being given a specific and individual opportunity to challenge the figures determined by TGS LDC. The Commission has reviewed all the available evidence while making its original decision, and thus, the review petitioner has not provided sufficient grounds to reconsider or review the order. This is particularly relevant given that the review petitioner's captive power plant does not meet the criteria for a co-generation plant, as there is no declaration from the competent authority recognizing the review petitioner's captive power plant as a renewable energy source.

15. In the circumstances the Commission does not find any merits for reviewing the order passed by it on 27.03.2024. Accordingly, the review petition stands rejected, but in the circumstances of the case without any costs.

**This order is corrected and signed on this the 25<sup>th</sup> day of September, 2024.**

**Sd/-**  
(BANDARU KRISHNAIAH)  
MEMBER

**Sd/-**  
(M.D.MANO HAR RAJU)  
MEMBER

**Sd/-**  
(T.SRIRANGA RAO)  
CHAIRMAN

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