

## **DELHI ELECTRICITY REGULATORY COMMISSION**

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110 017

F.11 (1110)/DERC/2014-15/4340

### **Petition No. 19/2014**

**In the matter of:** Complaint filed under section 142 of Electricity Act, 2003

**And**

**In the matter of:**

Green Energy Association,  
Sargam, 143, Taqdir Terrace,  
Near Shirodkar High School,  
Dr. E. Borjes Road,  
Mumbai – 400012

.....**Complainant**

VERSUS

1. Tata Power Delhi Distribution Ltd.

Through its: **M.D**

Grid Sub – Station Building,  
Hudson Lines, Kingsway Camp  
Delhi – 110009

2. BSES Yamuna Power Ltd.

Through its: **CEO**

Shakti Kiran Building,  
Karkardooma  
New Delhi – 110092

3. BSES Rajdhani Power Ltd.

Through its: **CEO**

BSES Bhawan  
Nehru Place  
New Delhi-110019

4. Energy Efficiency & Environment,

Govt. of Delhi (EE&REM)

2<sup>nd</sup> Floor, E – wing, GPO Building,  
Vikas Bhawan – II,  
Civil Lines, New Delhi - 110054

.....**Respondents**

**Coram:**

**Sh. P. D. Sudhakar, Chairperson, Sh. J. P. Singh, Member &  
Sh. B. P. Singh, Member.**

**Appearance:**

1. Ms. Mandakini Ghosh, Counsel for the Petitioner;
2. Ms. Sarika Mehta, AM, TPDDL;

3. Ms. Nayantara Pande, CL., TPDDL;
4. Mr. Sandeep Goel, PE, EE&REM;
5. Mr. Sumit Rawat, PE, EE&REM;
6. Mr. Parinay D. Shah, Advocate, TPDDL;
7. Ms. Supriya Juneja, Advocate, TPDDL;
8. Mr. Uttam Kumar, AM, TPDDL;
9. MR. Rajeev Chowdhary, BRPL;
10. Mr. Sai Prabha, BRPL;
11. Mr. Ravi, BRPL.

**INTERIM ORDER**

(Date of Hearing: 30.10.2014)

(Date of Order: 17.11.2014)

1. The aforesaid Petition is filed by Green Energy Association, an Association of the companies engaged in the business of Renewal Energy. The major focus of the Associations is on REC mechanism in India.
2. The Association has filed the Petition under Section 142, Section 146 and Section 86(1) of the Electricity Act, 2003. The Petitioner has requested for action against the Discoms under Regulation 11(1) and 11(2) of the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 for alleged failure to meet Renewal Purchase Obligation.
3. The matter was listed for hearing today i.e. 30.10.2014 whereby representatives of the parties were present.
4. The Counsel for the Respondent submitted that the present petition may be dismissed because the Petitioner has no locus standi in the instant case and basically it is a form of PIL seeking enforcement of directions of the Commission issued through Tariff orders. In support of its claim, the Counsel for the Respondent cited judgements of the Hon'ble Supreme Court in (i) Grid Corporation of Orissa Limited vs. Gajendra Haldea and Others, (2008) 13 SCC414 and (ii) Executive Engineer, Southern Electricity Supply Company of Orissa Limited and others vs Sri Seetaram Rice Mill, (2012) 2 SCC 108.

5. The Counsel for the Petitioner confronted the submissions of the counsel for the Respondent and said that in the similar case filed before the Appellate Tribunal for Electricity (ATE) namely Indian Wind Energy Association vs. Gujarat Electricity Regulatory Commission & Others, Appeal no. 24 of 2013 & IA no. 39 of 2013, the Tribunal has held that the appeal filed by Wind Energy developers against the impugned order of the State Commission allowing relaxation in RPO to the Distribution Licensees is maintainable.

6. The instant Petition is for admission as a petition filed under Section 142 of the Electricity Act, 2003. Section 142 of the Act reads as under:

*“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 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”.*

7. It may be seen that the complaint may be filed by any person in respect of contravention of any of the provisions of the Act and the Rules and Regulations made thereunder or any directions by the Commission. Section 142 nowhere contemplates that the complainant must be the consumer or a person, who has suffered an injury due to non-compliance of the directions or is an aggrieved person.

8. The argument of the Counsel for the Respondent cited in Gajendra Haldea case does not have any force in the instant case. The Hon'ble Supreme Court in Gajendra Haldea has held that

*“..... the expression “any person aggrieved” must be a person who suffered legal grievance or legal injury or one who has been unjustly deprived and denied of something which he would have been entitled to obtain in the usual course”.*

In the instant case, the Petitioner is an Association of the companies engaged in the business of Renewal Energy and non compliance of the RPO may result in their being unjustly deprived and denied of something which they would have been entitled to and obtained in the usual course. Moreover, the Gajendra Haldea case was in relation to an intra-State sale of electricity and the Petitioner no way was affected by such intra state sale of electricity.

9. In Ghulam Qadir v. Special Tribunal and Ors, (2002) 1 SCC 33, the Hon'ble Supreme Court considered a similar issue and observed as under:-

*"...The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. ---In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."*

10. In view of the above, the Commission finds that the argument of locus standi as preferred by the Respondent has no force in the instant case.

11. The other argument of the Respondent about interpretation of the statute that the Preamble and the Statement of objections and reasons of an Act may also be taken into consideration to interpret various clauses of a statute as per the observation of the Supreme Court in "Executive Engineer, Southern Electricity" case has also been considered. The Hon'ble Supreme Court in the aforesaid case has observed

*"In our considered view, the two maxims which should be applied for interpretation of such statutes are ex visceribus actus (construction of the act as a whole) and utres magis valeat quam pereat (it is better to validate a thing than to invalidate it). It is settled cannon of interpretative jurisprudence that the statute should be read as a whole. In other words, its different provisions may have to be construed -together to make consistent construction of the whole statute relating to the subject matter. A construction which will improve the workability of the statute, to*

*be more effective and purposive, should be preferred to any other interpretation which may lead to undesirable results."*

12. On going by the principles laid down by the Hon'ble Supreme Court, it may be seen that the Preamble of the Electricity Act, 2003 also encompasses the object of promotion of efficient and environmentally benign policies for electricity sector. Moreover, Section 86(e) of the Act thrusts upon the Commission responsibility to 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. Therefore, reading of the Act as a whole, clearly manifests that the Renewable Purchase Obligation (RPO) is well within the ambit of the Electricity Act and a petition to enforce such a valid scheme may be admitted.

13. In view of the foregoing, the Commission finds that the present petition is maintainable and issues a show cause notice to the Respondents as to why penal action under Section 142 of the Electricity Act, 2003, be not taken against them for failure to meet the Renewable Purchase Obligations as directed by the Commission and provisions of law. The Respondents are directed to file their reply within two weeks with service of a copy to the Complainant. The Complainant has also been given liberty to file rejoinder, if any, within a week of above filing.

14. The next date of hearing shall be intimated to the parties in due course.

15. Ordered accordingly.

Sd/-  
(B. P. Singh)  
Member

Sd/-  
(J.P. Singh)  
Member

Sd/-  
(P. D. Sudhakar)  
Chairperson