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**ORDER  
OF THE  
WEST BENGAL ELECTRICITY REGULATORY COMMISSION  
IN THE MATTER OF  
CASE NO: SM-37/23-24**

**SUO-MOTU ORDER TO REMOVE THE DIFFICULTY  
FACED BY THE DISTRIBUTION LICENSEES TO MEET  
THE RENEWABLE PURCHASE OBLIGATION (RPO) FOR  
THE YEAR 2023-24 IN ABSENCE OF ANY RPO TARGET  
SPECIFIED BY THE COMMISSION**

**PRESENT:**

**SRI MALLELA VENKATESWARA RAO, CHAIRPERSON  
SRI PULAK KUMAR TEWARI, MEMBER**

**DATE: 30.10.2023**



**Suo-Motu order of the Commission to remove the difficulty faced by the distribution licensees to meet the Renewable Purchase Obligation (RPO) for the year 2023-24 in absence of any RPO target specified by the Commission**

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**FACTS IN BRIEF**

- 1.0 The West Bengal Electricity Regulatory Commission (Commission) vide Notification No 50/WBERC dated 22.03.2013 published the West Bengal Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2013 (Principal RE Regulation) wherein Renewable Purchase Obligation (RPO) target upto 2017-18 for all the utilities under this Commission has been specified. It has also been mentioned in the regulation that for subsequent years (from 2018-19 onwards) the increase in RPO target shall be 1% each year till the ultimate target is reached by the distribution licensee.
- 2.0 Commission vide notification No 71/WBERC dated 21.12.2020 published the West Bengal Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (First Amendment) Regulations, 2020 (in short 'RE 1<sup>st</sup> Amendment Regulation') inter alia specifying the RPO target for the years 2020-21, 2021-22 and 2022-23.
- 3.0 M/s. Bengal Energy Ltd. and Tata Power Ltd. challenged the RE 1<sup>st</sup> Amendment Regulation in WPA No. 19019 of 2021 and WPA no. 21013 of 2021 on the issue whether fossil fuel-based cogeneration can be accepted as renewable energy sources and qualified for RPO.
- 4.0 Hon'ble High Court at Calcutta passed the judgement and order dated 15.03.2022 in WPA No. 19019 of 2021 and WPA No. 21013 of 2021. The relevant portion of the judgement of the order is reproduced below:

*"61. Accordingly, WPA 19019 of 2021 and WPA 21013 of 2021 are partially allowed, thereby quashing and setting aside the impugned Resolution, being the West Bengal Electricity Regulatory Commission (Cogeneration and*



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*Generation of Electricity from Renewable Sources of Energy) Regulation [Notification No. 71/WBERC] dated December 21, 2020 and reviving Notification No. 50/WBERC dated March 22, 2013 as it stood immediately prior to the 2020 amendment.*

*62. All acts or action, if any, done or taken on the basis of the impugned 2020 Resolution, stand reversed.*

*63. Nothing in this order shall, however, preclude the WBERC from drawing up a fresh Resolution in consonance with the State Government's directives.*

*.....*

*Later*

*Since substantial questions of law are involved in the matter, on the prayer of the learned Senior Advocate appearing for the WBERC, the operation of the above judgment and order is stayed till April 30, 2022. However, for the ends of justice, the operation of the impugned Regulations of 2020 shall also remain stayed for the same period, that is, till April 30, 2022.*

*This order be deemed to be a part of the above judgment."*

- 5.0 The Commission filed a petition for reviewing the decision of the order dated 15.03.2022 in M.A.T. No 568 of 2022 and in M.A.T. No 569 of 2022 Hon'ble High Court admitting the review petition has passed an interim order granting stay on the order dated 15.03.2022.
- 6.0 Hon'ble High Court at Calcutta has passed an order on 24.07.2023 wherein partial stay has been granted. The relevant portion of the order is reproduced below:



**Suo-Motu order of the Commission to remove the difficulty faced by the distribution licensees to meet the Renewable Purchase Obligation (RPO) for the year 2023-24 in absence of any RPO target specified by the Commission**

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*"1. The interim order, already granted, shall continue and it stands modified to the extent that the order of interim stay granted will be confined to the amendment made to the regulation qua industrial waste and cogeneration and in other respects including solar energy the order of stay shall not operate.*

*2. Affidavit of exception filed by Bengal Energy and affidavit of exception filed by Tata Power Company Limited are taken on record.*

*3. Let the appeals be listed for directions on 13th July, 2023."*

**OBSERVATION OF THE COMMISSION**

- 7.0 In view of the facts stated above it is observed that the RE 1<sup>st</sup> Amendment Regulation is still sub judice and the Commission is not in a position to amend the Principal RE Regulation. It is also observed that in terms of regulation 19.1 of the Principal RE Regulation the Commission may Suo Moto or on an application from any person generating electricity from cogeneration and/or renewable sources or a buyer licensee, review these regulations and pass appropriate orders to remove any difficulty in implementing the provisions of these regulations.
- 8.0 In terms of section 86(1)(e) of the Electricity Act, 2003 the Commission is required to specify the year wise target of RPO for the distribution licensee.
- 9.0 In absence of any RPO target for the year 2023-24 the distribution licensees are facing difficulty.

**ORDER OF THE COMMISSION**

- 10.0 Commission without intervening into the Regulations under stay makes it clear that the RPO target for 2022-23 shall continue till further order of the Commission in view of the decision of the Hon'ble High Court at Calcutta in M.A.T. No 568 of 2022 and in M.A.T. No 569 of 2022.



**Suo-Motu order of the Commission to remove the difficulty faced by the distribution licensees to meet the Renewable Purchase Obligation (RPO) for the year 2023-24 in absence of any RPO target specified by the Commission**

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11.0 Let a copy of the order be served upon SLDC and all distribution licensees under this Commission. A copy of the order be posted in the website of the Commission.

12.0 A copy of this order be served upon the State Government in the Department of Power.

**Sd/-  
(PULAK KUMAR TEWARI)  
MEMBER**

**Sd/-  
(MALLELA VENKATESWARA RAO)  
CHAIRPERSON**

**Dated: 30.10.2023**

**Sd/-  
SECRETARY**