

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(APPELLATE JURISDICTION)**

**ORDER ON DFR NO. 1768 OF 2018 & IA NOS. 1093 & 1090 OF 2018**  
**ON THE FILE OF THE APPELLATE TRIBUNAL OF ELECTRICITY,**  
**NEW DELHI**

**Dated: 21<sup>st</sup> August, 2018**

**Present: Hon'ble Mr. Justice N. K. Patil, Judicial Member**  
**Hon'ble Mr. S. D. Dubey, Technical Member**

**IN THE MATTER OF:**

**Chhattisgarh Biomass Energy Developers Association**

Through its Authorized Signatory

Shri Sunil Kumar Agrawal,

H-201, Anupam Nagar,

Raipur, Chhattisgarh-492 007

.... **Appellant(s)**

***VERSUS***

**1. Chhattisgarh State Electricity Regulatory Commission**

Through its Secretary,

Irrigation Colony, Shanti Nagar,

Raipur, Chhattisgarh – 492 001

**2. Chhattisgarh State Electricity Power Distribution  
Company Limited**

Through its Managing Director

Fourth Floor, Vidyut Seva Bhawan, Dangania,

Raipur, Chhattisgarh – 492 013

.... **Respondents**

Counsel for the Appellant (s) : Mr. Raunak Jain  
Mr. Vishvendra Tomar

Counsel for the Respondent(s) : ----

**The Appellant has sought the following reliefs in the instant Appeal, being DFR No. 1768 of 2018:**

- (a) Allow the Appeal and set-aside the impugned Order dated 07.02.2018 in Suo-Motu Petition No. 65 of 2017(T), passed by the Chhattisgarh State Electricity Regulatory Commission;
- (b) Direct the State Commission to adopt the Biomass fuel price of Rs. 3210/- per ton discovered by the State Level Committee for FY 2016-17, constituted under Regulation 45.1 of the RE Regulations 2012 as amended by the Second Amendment 2016;
- (c) Pass such other or such further order/orders/directions which the Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

**The Appellant has presented this Appeal for considering the following Questions of Law:**

- (A) Whether the State Commission has followed its own Regulation 45.1 of the RE Regulations 2012, as amended by the Second Amendment Regulations 2016 which provides that the Biomass fuel price for fifth year of the control period (i.e. 2016-17) "shall be determined through independent study."
- (B) Whether the State Commission is bound to follow its own Regulations and adopt the Biomass fuel price as discovered by the State Level

Committee through a transparent, market-based, State-specific and independent study, which is further in line with the directions given by this Hon'ble Tribunal vide its Judgment dated 23.03.2015 in O.P. No. 3 of 2012?

- (C) Whether the impugned order, being devoid of any supporting reasons and simply stating that the State Commission does not agree with the fuel price discovered by the State Level Committee while referring to the Legal Opinion obtained from its own advocate, is liable to be quashed and set-aside, as an order passed without any reasons is non est in law?
- (D) Whether the State Commission has given patently erroneous findings in para 14 of the impugned order, contrary to the record available before it that the fuel price discovered by the State Level Committee through a transparent, market-based, State-specific and independent study, "was not supported with any valid reason to accept"?
- (E) Whether the State Commission is bound by the submission made previously before this Hon'ble Tribunal in Appeal No. 189 of 2015 regarding amendment to its RE Regulations and recorded by the Hon'ble Tribunal in para 7(f) of its Judgment dated 04.12.2015 and further repeated before the Hon'ble Supreme Court in the counter affidavit filed by the State Commission in Civil Appeal No. 4501/2016?

- (F) Whether the State Commission is correct in adopting the biomass fuel price for other states” as prescribed by CERC, only because one Member of the State Level Committee did not agree with the findings of the rest of the Committee, while other Members such as State Govt., Consumer Representative, etc. all agreed with the recommendations?
- (G) Whether the State Commission, in para 12 of the Impugned Order has given vague, arbitrary, and superficial findings that it was “not convinced on certain techno-legal point and therefore decide to obtain legal opinion from the Advocate”, and that, “As per the conclusion of legal opinion, the final report submitted by the Committee has no merit as it has not been prepared on the justified ground to be accepted by the Commission?
- (H) Whether the entire exercise of discovery of Biomass fuel price through an independent and market based study in terms of Judgment dated 23.03.2015 in O.P. No. 3 of 2012 as well as in line with Regulation 45.1 of the RE Regulations 2012 as amended by the Second Amendment 2016, has been frustrated by the State Commission by simply adopting the fuel price for other States” as prescribed by CERC, which is no longer an option since Regulation 45.4 stands deleted in view of the Second Amendment 2016?

- (I) Whether the State Commission could have sought more information under Regulation 31 of the CSERC (Conduct of Business) Regulations, 2009 from the State Level Committee, if at all State Commission felt that there was insufficient material on a particular item or recommendation of the State Level Committee?

## **ORDER**

### **PER HON'BLE MR. JUSTICE N. K. PATIL, JUDICIAL MEMBER**

1. Chhattisgarh Biomass Energy Developers Association, Appellant herein, questioning the legality and correctness of the impugned Order dated 07.02.2018 in Suo-Motu Petition No. 65 of 2017(T) passed by the Chhattisgarh State Electricity Regulatory Commission, Raipur, Chhattisgarh, first Respondent herein, presented this appeal, being DFR No. 1768 of 2018 and IA Nos. 1093 of 2018 & 1090 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi.

2. We have heard the learned counsel, Mr. Raunak Jain, appearing for the Appellant.

3. The learned counsel appearing for the Appellant, at the outset, submitted that, the instant appeal, being DFR No. 1768 of 2018 along with IA Nos. 1093 & 1090 of 2018, may kindly be dismissed as withdrawn

reserving liberty to the Appellant to redress their grievance before the appropriate Legal Forum. All the contentions of the Appellant may kindly be left open in the interest of justice and equity.

4. Submission made by the learned counsel appearing for the Appellant, as stated supra, is placed on record.

5. Registry is directed to number the Appeal.

6. In the light of the submissions made by the learned counsel appearing for the Appellant and having regard to the facts and circumstances of the case, the instant Appeal, being DFR No. 1768 of 2018, filed by the Appellant is dismissed as withdrawn at the risk of the learned counsel appearing for the Appellant reserving liberty to the Appellant to redress their grievance before the appropriate Legal Forum, if they so advised or the need arises. All the contentions of the Appellant are left open.

7. With these observations, the instant Appeal, being DFR No. 1768 of 2018, filed by the Appellant stands disposed of.

**IA NOS. 1093 & 1090 OF 2018**

8. In view of the Appeal, being DFR No. 1768 of 2018, on the file of the Appellant Tribunal for Electricity, New Delhi being dismissed as withdrawn, the reliefs sought in IA Nos. 1093 & 1090 of 2018 do not survive for consideration and, hence stand disposed of.

9. Order accordingly.

**(S. D. Dubey)**  
**Technical Member**

*vt/kt*

**(Justice N. K. Patil)**  
**Judicial Member**