

COURT - I

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal No.56 of 2009 &
IA No. 144 , 145 & 248 of 2009**

Dated: 19th May, 2010

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

Jindal Poly Films Ltd.

.... Appellant (s)

Versus

Maharashtra Electricity Regulatory Commission

... Respondent (s)

Counsel for the Appellant (s) : Ms. Suruchi Aggarwal &
Mr. K.K. Gupta

Counsel for the Respondent (s) : Mr. Buddy A. Ranganadhan for MERC.

ORDER

Heard the learned counsel for the parties.

The Captive Power Purchasers Association, in which the Appellant is one of the Members, filed a Petition before the Commission seeking clarification of the Order, dated 16.08.2006, and claiming that the RPS Order will not apply to the Members of the Association. However, the Commission passed the impugned Order dated 17.11.2008 rejecting the said claim. Challenging the said Order, this Appeal has been filed by the Appellant individually.

After hearing the learned counsel for the parties, we are of the view that instead of going into the merits of the matter, it

would be appropriate to give a direction to the Commission to consider the issue afresh in view of the affidavit filed by the Commission giving undertaking that the Commission will consider afresh all the issues for the fresh RPS Control Period uninfluenced by any of the observations or the findings contained in the original RPS Order dated 16.08.2006 or the impugned Order dated 17.11.2008 and pass an Order after hearing the parties concerned.

The relevant paragraphs 5 and 8 quoted in the affidavit filed by Shri P.S. Varhade, Director (EE) dated 11.12.2009 of the Commission is as follows:

“5. I submit that in moreover, the Appellant is not prejudiced in any way by the applicability of the RPS Order dated 16.08.2006. In fact, the renewable purchase specification specified under the impugned order, have been reduced by a subsequent order dated 7th August 2009 in Case Nos. 104, 122 and 125 of 2008 in the matter of petitions seeking waiver of RPS under the Commission’s Order dated 16.08.2006 in Case No. 6 of 2006 and/or review thereof. The operative part in this regard contained in the order dated 7th August 2009 is as under:

“Further, considering year-to-year shortfall in RE capacity addition, the Commission is of the view that it would not be practical to expect that such shortfall can be made good on cumulative basis by the end of FY 2009-10. Hence, the Commission believes that in pursuance of C1.2.6.12 of RPS Order (Case 6 of 2006), it would be most

appropriate to modify the RPS percentage requirement for FY 2007-08, FY 2008-09 and FY 2009-10 to the lower of (a) RPS target as specified under C1.2.6.7 or (b) actual achievement of RPS target in respect of each 'Eligible Person.'

- 8. I respectfully state that in order to preserve parity amongst all the stakeholders in the RPS Regime and in order to be able to consider all the issues concerned therein in a wholesome and all-round manner, if this Hon'ble Tribunal were graciously pleased to so permit, the Commission will consider afresh all such issues for the fresh RPS Control Period uninfluenced by any observations or findings in the original RPS Order dated 16.08.2006 or the Order dated 17.11.2008 in case No. 83 of 2008 (which is impugned in the present appeal) or even by the contents of the Written Submissions dated 17.07.2009 filed before this Hon'ble Tribunal in the present matter.'***

We dispose of the Appeal in the above terms and direct the Commission to consider all such issues for fresh RPS control future period, in the light of the undertaking given by the Commission in Paragraphs 5 and 8 of the affidavit filed by the Commission.

With these observations, the Appeal is disposed of.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson