Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 57 of 2009

Dated: 26th April 2010

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member

In the matter of:

Century Rayon (A Division of
Century Textiles and Industries Ltd.)
P.B. No. 22
Shahad-421 303, District Thane
Maharashtra

… Appellant(s)

Versus

1. **Maharashtra Electricity Regulatory Commission**
   World Trade Centre No. 1,
   13th Floor, Cuffe Parade,
   Mumbai-400 005 … Respondent-1

2. **Maharashtra Energy Development Agencyh**
   MHADA Commercial Complex
   2nd Floor, Opposite Tridal Nagar,
   Yerwada,
   P:une-411 006 … Respondent-2

3. **Maharashtra State Electricity Distribution Co. Ltd.**

   "Prakashgad"Bandra (East)
   Mumbay-400 051 … Respondent-3

Counsel for the Appellant(s) **Mr. Prakash Shah, Senior Counsel**
Mr. O.P. Gaggar
Mr. Shirish Gupte

Counsel for the Respondent(s) **Mr. Ravi Prakash,**
Mr. Varun Aggarwal &
Mr. Abishek Mitra for MSEDCL
Mr. Buddy A. Ranganadhan for MERC
Mr. R. Sasiparbhu for
Mr. Suresh Gupta, Amicus Curie
Ms. Raji Joseph (for Intervenor)
Mr. Raunak Jain

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. M/s Century Rayon, Maharashtra is the Appellant herein.

2. It is a textile company. In its plant, it has installed a co-generation unit. The State Commission passed an order dated 18.08.2006 directing the distribution licensee as well as the open access users and captive consumers to purchase

renewable energy. On the basis of that order, the Appellants being a co-generation unit, received a letter from the MEDA, Respondent-2 communicating the order dated 18.08.2006 passed by the State Commission and asking the Appellant to purchase renewable energy from the generating units.

3. The Appellant in his reply stated that the Appellant is not required to purchase renewable energy in terms of the said order as it is a co-generation plant. There was no response to this letter from the respondent. Therefore, the Appellant filed a petition before the State Commission seeking for a clarification contending that the Appellant being a co-generation plant, is not covered by the said order dated 18.08.2006. However, the State Commission by its order dated 19.12.2008 dismissed the petition holding that the order dated 18.08.2006 passed by the Commission earlier would cover the Appellant co-generation plant as well and therefore, he is required to purchase renewable energy from

the generating units. Aggrieved by the same, the Appellant has filed this Appeal.

4. The main ground of Appeal, as projected by the learned Senior Counsel for the Appellant is as follows:-

5. The impugned order clarifying that the Appellant being a co-generation plant is also covered by the main order compelling the Appellant to purchase renewable energy is in complete contravention of the section 86(1)(e) of the Electricity which mandates that the State Commission shall promote both co-generation and the generation of electricity from the renewable energy and therefore, the co-generation plant which is to be promoted cannot be compelled to purchase electricity from the renewable energy plants, which also is to be promoted.

6. In reply to this, the Learned Counsel for the Respondents including the State Commission has submitted as follows:-

The meaning attributed to section 86(1)(e) of the Act by the Appellant is wrong because actual meaning of the said section that the words co-generation/generation shall be read with renewable energy only. In other words, the opening word of the section means the co-generation from renewable source and generation from renewable source. Therefore, the word "and" in between co-generation and generation from the renewable energy must be read conjunctively and not disjunctively. When such is actual meaning of these words, the legislation intent is to promote only generation and co-generation which produces renewable energy and therefore, the order passed by the State Commission is perfectly valid.

7. Both the learned counsel for the parties have cited several authorities to substantiate their respective pleas. We

have also appointed Mr. Suresh Gupta as Amicus Curie as he volunteered to assist this Tribunal on this issue. Accordingly, we heard him also.

8. The question which is involved in this case is with reference to the interpretation of the words contained in section 86(1)(e) of the Act. Relevant clause 86(1)(e) reads as follows:

"*86* Functions of the State Commission – (i) The State Commission shall discharge the following functions namely -

…………………

(e) 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.

9. A plain reading of the section would provide for discharge of the following functions:

(i) Promote co-generation

(ii) Promote generation of electricity from the renewable sources of energy

(iii) Provide suitable measures for connectivity with the grid.

(iv) For sale of electricity to any person

(v) Specify the percentage of total consumption of electricity in the area of the distribution licensee for purchase of electricity produced by the co-generator and generation through renewable source of energy.

10. According to the Learned Counsel for the State Commission, the word "co-generation and generation" would relate to the renewable source of energy only and as such it has to be read conjunctively and not disjunctively. We are unable to accept this proposition especially when the

Parliament defines the word "co-generation in section 2(12) of the Electricity Act which is as follows:

> **"Co-generation means a process which simultaneously produces two or more forms of useful energy (including electricity)"**

The co-generation is also a process whereby simultaneously the production of electricity and heat both of which are used. The definition given in section 2(12) of the Act would show that the legislature has not restricted the said process to mean production of energy from any form of fuel. It may be fossil fuel or may be non-fossil fuel.

11. Co-generation empowers the energy supply to all types of consumers with various benefits to both users and society at large. Whereas the New and Renewable energy broadly covers small hydropower, wind, biomass and solar plant. Therefore, the word "and" mentioned in between the co-generation and generation from the renewable source of energy is to be read with preceding expression "promote".

In other words, the word "and" between co-generation and generation of renewable energy virtually means that it mandates State Commission to promote both the co-generation and generation from the renewable energy.

12. As indicated earlier the Parliament intended to keep different meaning of this expression "co-generation" by giving a definition under section 2(12) of the Act.

13. If the legislature intended to include only the co-generation from the renewable sources of energy in section 86(1)(e) of the Act, there was no necessity to include the separate expression "co-generation" under section 86(1)(e) of the Act and the legislature would have used the expression "promote the generation of electricity from the renewable sources of energy and that expression would be sufficient to indicate that the generation of electricity by a co-generator as well through renewable source.

14. In other words, if the interpretation of the State Commission stating that both co-generation and generation would relate to the renewable energy alone is accepted, then the expression "co-generation" would be meaningless. The reading of the entire section 86(1)(e) does mandate the State Commission to promote both co-generation and generation of electricity from renewable sources. It cannot be contended that the words "from the renewable sources" would apply to both the categories. This cannot be the intention of the legislature. If that is so, the legislature would have used the term as "both generation as well as co-generation from the renewable sources". That is not the wording.

15. As pointed out by the learned counsel for the Appellant, in its New and Renewable Policy 2005, it is clarified that accelerated efforts will be made to provide inter alia, industrial co-generation. This is mentioned in para 5.4.1 which is quoted as below:

" *5.4.1 Accelerated efforts will be made to provide new and renewable energy systems /devices for urban, industrial and commercial applications. The focus areas of deployment are municipal solid waste to energy, industrial and commercial wastages and effluents to energy,* industrial co-generation, combined heat and power applications. SPV street lighting control systems, SPV power for hoardings, solar systems and devices for water heating and industrial process heat, and solar architecture."

16. In the above context, the contention that the sale of electricity to any person is to be read in the context of the sale by the co-generator or the generator of electricity from the renewable source of energy does not merit consideration. The Appellant is a co-generator. It produces energy more efficiently as compared to conventional power plants which is to be treated at par with the electricity from the renewable source of generation. When such being the case, the

fastening of obligation on the co-generator to procure electricity from renewable energy producer would defeat the object of section 86(1)(e). These two categories of generators namely: (i) Co-generators and (ii) generators of electricity through renewable sources of energy are required to sell the electricity to any person as may be directed by the State Commission. Any obligation for purchase of electricity from these two sources can be imposed only on the distribution licensee and not on the captive consumers who are generating electricity through co-generation irrespective of the fuel used.

17. It is to be reiterated that on a plain reading of section 86(1)(e), it does not show that the expression 'co-generation' means co-generation from renewable sources. We are to understand the meaning of the word co-generation as defined in definition section 2 (12) of the Act. In other words, neither the subject nor the context is to suggest that the expression co-generation under section 86(1)(e) is

intended to mean differently in what is defined in section 2(12) of the Act.

18. The reliance placed on the reading of para 6.4 of the Tariff Policy that uses the word including co-generation is misplaced. In fact, the para 6.4 of the Tariff Policy does not suggest that the expression "co-generation" used in section 86(1)(e) is to cover co-generation only from non-fossil fuel. The mere mention of co-generation in para 6.4 of the Tariff Policy cannot mean that co-generation mentioned under 86(1)(e) mean only co-generation units using non-fossil fuel.

19. According to the learned counsel for the State Commission, the intent of the Electricity Act with regard to section 86(1)(e) of the Act is to promote the production of electricity only from renewable sources and not from fossil fuel. As stated earlier, this cannot be the correct interpretation.

20. As a matter of fact, the reading of the section 86 (1)(e) along with the other sections, including the definition Section and the materials placed on record by the Appellant would clearly establish that the intention of the legislature is to promote both co-generation irrespective of the usage of fuel as well as the generation of electricity from renewable source of energy.

21. It is no doubt true that the generation of electricity from renewable sources is to be promoted as per section 86(1)(e) of the Act. It is equally true that co-generation of electricity is also to be promoted as it gives several benefits to the society at large. Various records produced by the Appellant would also indicate that the co-generation produces both electricity and heat and as such it can achieve the efficiency of up to 90% giving energy saving between 15-40% when compared with the separate production of electricity from conventional power stations and production of steam from boiler. It is adopting most efficient way to use

fuel. The benefits that are derived from co-generation are many. Co-generation helps save energy costs, improves energy security of supply, and creates jobs. Co-generation can be based on a wide variety of fuels and individual installations may be designed to accept more than one fuel. Co-generation is the most efficient way of generating electricity, heat and cooling from a given amount of fuel. Co-generation helps reduce CO_2 emissions significantly. It also reduces investments into electricity transmission capacity, avoids transmission losses and ensures security of high quality power supply. Because of these benefits being derived from the production of electricity through co-generation plant, the legislature intended to use the word "to promote" both the co-generation as well as the generation from the renewable source of energy.

22. When such is the intent of the legislature, the Appellant who is a co-generating unit, cannot be fastened with any obligation to purchase power generated by a renewable

energy source particularly when the co-generation of power is also one of the power which is meant to be promoted by the same provision of law.

23. As indicated above, the expression used in section 86(1)(e) is to promote both co-generation and generation of electricity from renewable source of energy. The clear meaning of these words is both are different and both are required to be promoted. Fastening of liability on one in preference to the other is totally contrary to legislative intent. The co-generation by different sources of fuel has not been distinguished by the Parliament either in section 2(12) or section 86(1)(e) of the Act.

24. It is cardinal rule of interpretation that the definition given to a word in the legislation means that the said word has to be construed as meant by its definition in whole of the legislation. The plain and simple meaning as emerging from the text of the legislation should be restrictively construed to

mean that the framers of the law knew what the technical problem for co-generation is and what are the different modes of energy in those processes. If the legislature wished to circumscribe the term co-generation to mean production of two or more forms of energy including electricity power only through the use of non-fossil fuel, then the legislature would have expressly provided the same in the legislation. In other words, it is to be stated that the definition given to the word co-generation by the legislature means that the said word has to be construed as mentioned by its definition in whole of legislation without any qualification. The matter of applicability of the renewable energy obligation on the co-generation and whether the co-generation has also to be promoted with the generation through renewable sources of power would require interpretation of the legislation.

25. It cannot be disputed that the energy efficiency of the co-generation plant is almost double than the normal power plants because normal power plants release residual energy

in the atmosphere, whereas the co-generation plant utilizes the energy to the maximum possible. It is established, as mentioned earlier, that the energy efficiency of the normal power plant is about 50 to 60% whereas the energy efficiency of the co-generation plant is about 80-85%.

26. Internationally, the Governments have been promoting co-generation of energy so that the precious fuel is not wasted and the environment is protected. Even the municipalities/local authorities have been encouraging the simultaneous use of the residual wastes. It is for this reason that the Electricity Act 2003 has cast obligation on the State Commissions to promote co-generation as well as the generation of electricity through renewable energy sources.

27. This aspect can be viewed from yet another angle also. As mentioned earlier, we are called upon to decide the question as to whether co-generation projects based on fossil fuel are not entitled to be treated at par with the eligible

renewable energy sources for renewable projects obligation. To answer this question we have to see the scheme of the Electricity Act as well as the National Electricity Policy and National Tariff Policy. Under the Act there are three categories of sources of energy each being accorded with a different treatment namely -

(i) Conventional Power Plants such as Thermal, Hydro and Nuclear Power Plants.

(ii) Renewal source of energy.

(iii) Non-conventional plants including co-generation plants.

28. Under the scheme of the Act and the policies framed thereunder, both renewable source of energy and co-generation power plant, are equally entitled to be promoted by suitable methods as provided under section 86(1)(e) of the Act. In other words, non-conventional power plants including co-generation plants are entitled to be treated at

par with the other renewable energy sources for the RPS regime.

29. In a typical co-generation power plant which is liquid fuel or gas based, heat is co-generated as a by-product or industrial waste and is harnessed for further power generation and for industrial use. For example, in a gas based co-generation power plant, Heat Recovery Steam Generators are installed which recover heat from the exhausts of gas turbines and the same heat is used for industrial purpose and running steam turbines, which are in turn used for further power generation.

30. The National Electricity Policy as well as National Electricity Tariff Policy encourages co-generation projects in as much as non-conventional energy sources. In this context, it is appropriate to refer to the Electricity Policy as well as the Tariff Policy. The National Tariff Policy in clause 5.2.26 provides as follows –

"A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act, captive generators have access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act. This should be done on priority basis to enable captive generators to become available as distributed generation along the grid. Towards this end, appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangements between captive generators and licensees

> ***and determine tariffs when a licensee is the off-taker of power from captive plant."***

31. The National Electricity Policy further in clause 5.12.3 provides as follows –

> ***"Industries in which both process heat and electricity are needed are well suited for co-generation of electricity. A significant potential for cogeneration exist in the country, particularly in the sugar industry. SERCs may promote arrangements between the co-generator and the concerned distribution licensee for purchase of surplus power from such plants. Co-generation system also needs to be encouraged in the overall interest of energy efficiency and also grid stability.***

32. The Tariff Policy dated 06.01.2006 issued under section 3 of the Electricity Act 2003 in clauses 6.3 and 6.4 provides as follows –

"Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages the captive power plants to be connected to the grid.

Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources(i.e. non-conventional source of energy generation including co-generation) taking into account availability of such resources in the region and its impact on retail tariffs."

33. It has been brought to our notice that, in the light of the above, the Government of India also in its communication dated 25.07.2005 addressed to all the Chief Secretaries of the State Governments and others requiring that the installation of co-generation projects based on conventional fuels such as coal, oil, lignite, gas and un/semi-utilized wastes/rejects like dolochar, coal rejects and refinery muds, etc. is to be encouraged in industry for

meeting power and energy requirements. It is pointed out that the West Bengal Electricity Regulatory Commission and Rajasthan Electricity Regulatory Commission have also framed regulations recognizing the co-generation as equivalent to generation of electricity from renewable sources. Under these regulations, the State Commissions have categorized co-generation as renewable energy without reference to the fuel used for such co-generation.

34. In the light of the above, when we notice the meaning of the Section 86(1)(e) of the Act, it is clear that it mandates the State Commissions to promote both the categories (1) co-generation plant (2) generation of electricity through renewable source of energy. The perusal of this section in conjunction with section 2(12) of the Act clearly indicate that the intention of the legislature is to promote co-generation in the industry without reference to the fuel used for such co-generation. In other words, the intention of the legislature is to clearly promote co-generation in the

industry generally and not co-generation from renewable energy sources alone.

35. As indicated earlier, if the intention of the legislature was to promote only co-generation from renewable source of energy, legislature need not use the word "co-generation" at all in section 86(1)(e) of the Act in the light of the definition given in section 2(12) of the Act. Since the word generation includes co-generation and as such the use of the word co-generation separately in the section would become unnecessary.

36. Besides this, the Learned Counsel for the Appellant as well as the Amicus Curiae, learned counsel have produced very many documents to show that the primary intention is to promote all forms of co-generation. The first document is the letter of the Ministry of Power dated 09.10.1995 to all the Chief Secretaries of the States recognizing the importance of encouragement to co-generation. According to this letter the

co-generation and small power production is an important ingredient of private power policy in a number of countries. It recognizes that developing countries in their recent restructuring process of the electricity sector have brought out important changes amongst others. The second document is a resolution of the Ministry of Power dated 06.11.1999. In this document, the Government has recognized that the industry in general and the process industry in particular needs energy in more than one form and if the energy requirements and supply to the industrial units are carefully planned, the overall efficiency of a very high order is possible to achieve. With the combined objectives of promoting better utilization of precious energy resources in the industrial activities and creation of additional power generation capacity in the system. Thus, the encouragement to co-generation plant in the country is being periodically suggested.

37. The Ministry of Power resolution further provides objectives of the policy. It is stated that since the electricity and heat are fundamental inputs to most of the industrial activities, the present policy strives to achieve the dual objectives of achieving higher efficiency in fuel use. With a view to promote setting up of cogeneration plants, it is proposed that the industry having cogeneration potential would be allowed to develop a power generating facility without necessarily going through the competitive bidding process.

38. One more document shown by the learned counsel for the Appellant is a resolution of the Ministry of New and Renewable Energy, Government of India on biomass energy and co-generation. In this the Government of India has observed as follows –

> ***"Industrial co-generation has in the past not received adequate attention, as cheap power and fuel were abundantly available. However, with increasing tariffs,***

and unreliable grid power, there is considerable opportunity for the industrial sector to tap the potential for producing electricity and thermal energy in the co-generation mode. In particular, here is significant potential in breweries, caustic soda plans, textile mills, distilleries, fertilizer plants, paper and pulp industry, solvent extraction units, rice mills, petrochemical plans, etc. Furthermore, co-generation projects based on conventional fuels such as coal, oil, lignite, gas and un/semi-utilized wastes/rejects like dolachar, coal rejects and refinery mud, etc. can also be installed in industry for meeting their power and energy requirements.

39. These documents as well as the relevant provisions of the Act and the National Electricity Policy and National Electricity Plan and Tariff Policy would make it clear that it is mandatory on the part of the State Commission to give encouragement to co-generation in the industry without

reference to any type of fuel or the nature of source of energy whether conventional or non-conventional.

40. As referred to earlier, the learned counsel for the State Commission, submits that the word "and" between co-generation and generation must be read conjunctively and not disjunctively. In order to substantiate this plea, the learned counsel for the Commission has cited following judgments.

(i) The Mersey Docks & Harbour Board Vs Henderson Brothers
[1888] XIII AC 595 (HL) at pgs 600 & 603.

(ii) Jagganath Mishra vs State of Orissa
(1966) 3 SCR 134 at 139 Plalium C

(iii) The Punjab Produce and Trading Co. Ltd. Vs The Commissioner of Income Tax West Bengal
AIR 1971 SC 2471 at 2474.

(iv) Kamta Prasad Aggarwal Vs Exec. Officer
(1974) 4 SCC 440 at para 11

(v) Municipal Corpn. Of Delhi Vs. Tek Chand Bhatia (1980) 1 SCC 158 at 163 para 11.

(vi) Hindustan Aluminium Corpn Vs. State of UP (1981) 3 SCC 578 at 582 para 10

(vii) Shiromani Gurdwara Prabhandhak Comm Vs Mahant Kirpa (1984) 2 SCC 614 para 18

viii) Paras Ram Vs State of Haryana AIR 1993 SC 1212 at 1214 para 10

(ix) Union of India Vs Surhid Geigy (1997) 11 SCC 657

(x) Kurukshetra University Vs Devender Kumar (2002) 4 SCC 172 at 179 para 8 Placitum 'b'

(xi) Rajesh Kumar Vs DCIT (2006) 10 JT 76 (SC) at 84 para 12.

41. This interpretation on the strength of the various judgments cited by him as indicated earlier is not correct. The term "and" as referred to in the judgments cited by the Counsel for the Commission can be used both for

conjunctively or disjunctively in the light of the facts and circumstances of each case. Therefore, the meaning assigned to the same has to be seen from the broader meaning of the said term to it by the legislature in the light of the facts of this case. As mentioned earlier, the term co-generation found in the section will become redundant if it is meant that both generation and co-generation has to be only from the renewable source of energy, since the term generation necessarily includes co-generation also as the term generation is a genus of which co-generation is specie.

42. The Learned Counsel for the Appellant would further contend that it is established practice of interpretation of the legislation that when a word is defined to mean (as done in the definition of the term co-generation) then that is prima facie restrictive and exhaustive as held by the Supreme Court in AIR 1960 SC 971 at page 975, AIR 1995 SC 1395 at page 1400 and AIR 2005 SC 2968 para 65 & 68.

43. It is true that section 2 of the Act prefixes the words "unless the context otherwise requires" but a plain reading of section 86(1)(e) does not show that expression co-generation used therein does not give the same meaning as defined in the definition section. Neither the subject nor the context means to suggest that the expression co-generation in section 86(1)(e) is intended to mean differently from what is defined in section 2(12) of the Act. The learned counsel for the Appellant also has cited (2009) 5 SCC 545, ***in Nair Service Society versus Dr. T. Beermasthan & Ors*****. (2009) 9 SCC 92 in** ***Vijay Narayan Thatte & Ors versus Stae of Maharashtra & Ors.*** **and (2005) 2 SCC 271 in** ***Nathi Devi versus Radha Devi Gupta*****. In these decisions it is held that the question of interpretation about intention would arise only when a statute is not clear. If the statute is clear, it has to be read as it is i.e. when the language in the statute is plain and clear, then the literal rule of interpretation has to be applied. It is only when the language in the statute is not clear or the language leads to some ambiguity, one can depart from the**

literal rule of interpretation. It is well settled that while interpreting a statute, efforts should be made to give effect to each and every word used by the legislature. In other words, interpretation of a statute by the court can only be when the same is ambiguous but when the provision is unambiguous, the court cannot add or subtract words to a statute or read something into it which is not there.

44. In this case, as discussed above, we find that in section 86(1)(e) as well as definition of section 2(12), the language is very clear and unambiguous and it gives out the manifold mandate to the State Commission to promote both the categories: one is co-generation as defined in section 2(12) irrespective of the fuel used and another is generation of the electricity from the renewable source of energy.

45. Summary of our conclusions is given below:-

(I) The plain reading of Section 86(1)(e) does not show that the expression 'co-generation' means

cogeneration from renewable sources alone. The meaning of the term 'co- generation' has to be understood as defined in definition Section 2 (12) of the Act.

(II) As per Section 86(1)(e), there are two categories of `generators namely (1) co-generators (2) Generators of electricity through renewable sources of energy. It is clear from this Section that both these categories must be promoted by the State Commission by directing the distribution licensees to purchase electricity from both of these categories.

(III) The fastening of the obligation on the co-generator to procure electricity from renewable energy procures would defeat the object of Section 86 (1)(e).

(IV) The clear meaning of the words contained in Section 86(1)(e) is that both are different and both are required to be promoted and as such the fastening of liability on

one in preference to the other is totally contrary to the legislative interest.

(V) Under the scheme of the Act, both renewable source of energy and cogeneration power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that cogeneration plants, who provide many number of benefits to environment as well as to the public at large, are to be entitled to be treated at par with the other renewable energy sources.

(VI) The intention of the legislature is to clearly promote cogeneration in this industry generally irrespective of the nature of the fuel used for such cogeneration and not cogeneration or generation from renewable energy sources alone.

46. In view of the above conclusions, we are of the considered opinion that the finding rendered by the Commission suffers from infirmity. Therefore, the same is liable to be set side. Accordingly, the same is set aside. Appeal is allowed in terms of the above conclusions as well as the findings referred to in aforesaid paras 16,17,22 and 44. While concluding, we must make it clear that the Appeal being generic in nature, our conclusions in this Appeal will be equally applicable to all co-generation based captive consumers who may be using any fuel. We order accordingly. No costs.

47. While parting with this case, we feel that it would be appropriate to record our appreciation for the effective assistance rendered by Mr. Prakash Shah, the learned senior counsel for the Appellant as well as Mr. Suresh Gupta, Amicus Curiae, in this Appeal who took pains to argue the matter which enabled this Tribunal to arrive at the above conclusion. Similarly, we would like to make a special

mention about Mr. Buddy A. Ranganadhan, the learned counsel for the State Commission who made a thorough preparation and lucid presentation before this Tribunal.

(H.L. Bajaj) **Technical Member**	**(Justice M. Karpaga Vinayagam)** **Chairperson**

Dated: 26th April, 2010.

Reportable/N on-reportable.