

**ODISHA ELECTRICITY REGULATORY COMMISSION
BUDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SAILASHREE VIHAR
BHUBANESWAR - 751021

**Present: Shri U. N. Behera, Chairperson
Shri S. K. Parhi, Member
Shri G. Mohapatra, Member**

Case No. 35/2021

M/s. Aarti Steels Ltd. Vrs. OREDA	Petitioner Respondents
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In the matter of: **Application under Regulations 12.5, 12.6 and 12.7 of OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015 read with Regulation 4.1 and 4.2 of the said Regulations, Clause-3 of the OERC Notification No: OERC/RA/RE-5/2013 dated 31.12.2019 and Section 86(1)(e) of the Electricity Act, 2003 seeking permission / direction to relax and exempt M/s. Aarti Steels Limited from the applicability of Renewable Purchase Obligation under Section 2 (12), 86 (1) (e) Electricity Act 2003.**

For Petitioner: Shri Bibhu Charan Swain on behalf of M/s. Aarti Steels Limited.

For Respondent: Ms. Sujata Das, OREDA.

ORDER

Date of Hearing: 10.08.2021

Date of Order: 07.10.2021

The Petitioner M/s. Aarti Steels Limited (ASL) has set-up an Integrated Steel Plant at Ghantikhal, Mahakalabasta, Cuttack and has also installed Captive Generating Plant (CGP) having two units of 40 MW and 50 MW Capacity in its premises. M/s. ASL has installed 3 no. of Ferro Alloy Plant, one no. of Steel Melting Shop, Rolling Mill and two nos. of Direct Reduced Iron (DRI)/ Sponge Iron Kiln.

2. The petitioner has submitted that in this metallurgical process fossil fuel is used to produce heat and steam energy which is utilized for power generation and process heating in production of billets, ferrochrome, ferro alloys, sponge iron and special rolled steels. There are 2 nos. of direct reduced iron (Sponge Iron) gas based Waste Heat Recovery Boiler (WHRB) installed in ASL for production of steam for utilization in power generation. Further there is 1 no. of coal based AFBC Boiler and 1 no. of CFBC Boiler

installed in ASL for production of steam for utilization in process heating and power generation.

3. The Petitioner has further submitted that in their processes enormous amount of heat energy is generated part of which is utilized in sponge iron production. Balance heat passes through super heater section, evaporator section and economizer section to produce super heated steam from water and then is released to atmosphere through ESP and chimney. Super heated steam enters the turbine, which acts as a prime mover for the Generator. Heat Content of the Waste Heat is used to heat the water and to increase the temperature of steam which is then passed through 40 MW Turbine Generator set to produce power and also steam which is supplied to Steel Melting Shop, Rolling Mill, for process requirement and process heating. The High Pressure and High Temperature Steam is utilised for Power Generation. Thus, ASL has a process in which it simultaneously produces two or more form of useful energy, i.e., power as well as steam for process requirement. Therefore, as per section 2(12) of electricity Act 2003 which defines cogeneration as “*a process which simultaneously produces two or more forms of useful energy (including electricity)*”, ASL is a co-generation plant.
4. The petitioner further has submitted that on 25th November 2016, the Energy Department of Govt. of Odisha has notified the Odisha Renewable Energy Policy, 2016 vide its Resolution No. 8646-OHPC-21/2016 where Clause 7 states that Waste to Energy mainly Municipal Solid Waste (MSW), Industrial and Agricultural Waste based Power Projects in Odisha are to be considered as Renewable Power Project and needs to be promoted. The Policy also provides that the Power Procurement Utility of the State Government i.e. GRIDCO shall purchase the power from such Waste based Power Projects at the generic tariff to be determined by OERC.
5. The Petitioner has submitted that one of the functions of the State Commission under Section 86 of the Electricity Act is as follows:

“86 (1) (e) promote co-generation 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 specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.”

APTEL in its Order dated 26.04.2010 in Appeal No. 57 of 2009 in Century Rayon Vrs. Maharashtra Electricity Regulatory Commission in para 45 has concluded as follows:

- “(i) The plain reading of Section 86(1)(e) does not show that the expression ‘co-generation’ means co-generation from the renewable sources alone. The meaning of 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-generation (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 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 intent.*
- (v) Under the scheme of the Act, both renewable source of energy and co-generation 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 co-generation and not co-generation or generation from renewable energy sources alone.”*

6. The petitioner has further submitted that APTEL while considering the co-generation and generation from renewable sources on equal footing, has observed the process of a typical cogeneration gas-based power plant in para 29 of the above said judgment :

“29 In a typical co-generation power plant which is liquid fuel or gas-based, heat is cogenerated 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 exhaust 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.”

APTEL in para 46 of the said judgment has further concluded as given below:

“46. In view of the above conclusions, we are of the considered opinion that the findings rendered by the Commission suffers from infirmity. Therefore, the same is liable to be set aside. 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 ordered accordingly. No cost.”

Further the APTEL in para 53 of its judgement dated 02.01.2019 in case of JSW Steel Ltd. Vrs. TNERC (Appeal No. 278 of 2015) case has held as follows:

“Therefore, we hold that a co-generation facility irrespective of fuel is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003; an entity which is to be promoted in terms of section 86(1)(e) of the Electricity Act, 2003 cannot be fastened with renewable purchase obligation under the same provision; and as long as the co-generation is in excess of the renewable purchase obligation, there can be no additional purchase obligation placed on such entities.”

APTEL in its judgment dated 16.04.2019 in case of Rajasthan Renewable Energy Corporation Limited Vrs. Shree Cement Limited (Appeal No. 146 of 2017) at para 19 has held that:

“From reading of the above section, it is clear that both the co-generation and renewable energy have to be promoted in terms of section 86(1)(e) of the Electricity Act. As long as captive consumers consume energy from co-generation unit beyond the RPO obligations, there is no obligation to purchase RE Certificates or consume renewable energy separately.”

7. The petitioner has submitted that they have made the submissions in accordance with the provisions of law and various judgments of the Hon’ble APTEL in this regard. The petitioner is seeking relaxation from the operation of OERC Regulations on the premises that the grounds of such relaxation emanates from successive interpretation of Section 86 (1) (e) of the Act by the Hon’ble APTEL in its various judgments. Further, the Hon’ble APTEL in para 23 of its judgment in Appeal No. 112 of 2014 Indian Glycol Vrs. UERC dated 01.10.2014 has held that it was a fit case for the state Commission to exercise its ‘power to relax’ its own regulations in order to give effect to the judgment dated 26.04.2010 in Century Rayon case in letter and spirit, even without waiting for bringing an amendment in the regulations.
8. Since, the RPO Regulations, 2015 do not provide for promotion of cogeneration, the Commission may invoke the provisions of power to relax to carry out the objective of the Act and also give effect to the judgments passed by APTEL. The Hon’ble Supreme Court in Case of State of Karnataka & Anr. Vrs. R Vivekanand Swami reported in (2008) 5 SCC 328, has held that *“a public authority may exercise its power of relaxation only*

when there exists such a provision and such an authority while exercising power must act judiciously keeping in mind the purport and objects and thereof.”

9. Arati Steels Ltd. further submitted that the Commission was pleased enough to invoke its provisions of power to relax to carry out the objective of the Act and also give effect to the judgments passed by APTEL in its recent Order dated 08.12.2020 in case no. 66/2019 in the matter of exemption and relaxation from applicability of RPO and its compliance to M/s. Tata Steel Limited, Kalinga Nagar who generates such captive cogeneration power from the Waste Heat Recovery Process.
10. Subsequently Hon'ble Commission has passed Notification No. OERC/RA/RE - 5/2013/ dated 31.12.2019 in which the Renewable Purchase Obligation Target for Conventional Captive Generating Plant commissioned and established before 01.04.2016 has been pegged down to 3%. The Petitioner has established its Captive Generating Plant prior to 01.04.2016, in view of the same the RPO Target as mentioned at Regulation 4.2 of OERC (Procurement of Energy from Renewable Sources and its compliance) Regulations, 2015 gets revised to 3 %. Because of these developments there is surplus of Generation of Cogenerated power in Aarti Steels Limited even after meeting its 3% RPO compliance on the power as generated from the coal based AFBC and CFBC Boiler based CGP.
11. The Petitioner has submitted that ASL has purchased around 17.089 MU of Solar Energy through purchase of Solar REC and around 36.28 MU of Non Solar Energy through purchase of Non Solar REC and 657.30 MU of Non Solar Energy by self consumption from Cogeneration Sources. Further, the surplus REC cannot be sold to any third party and needed to be carried forward. At present ASL is having excess RECs to the tune of 14628 nos. of Solar REC and 20266 nos. of Non Solar RECs equivalent to 34.98 MU and 561.10 MUs of cogeneration energy for which ASL is seeking approval of Commission for carrying forward and offsetting against Current and future Solar and Non-Solar Obligation. Similarly surplus Cogeneration cannot be sold to any third party or GRIDCO or DISCOM as the cost of generation is currently higher than the market price. The details of the RPO compliance status is furnished below:

Status of RPO Compliances Of Aarti Steels Limited						
Financial Year	Self Consumption from Conventional CGP in MU	Renewable Purchase Obligation Requirement in MU		Fulfilment of Renewable & Cogeneration Purchase Obligation from RECs in MU		Quantum of Excess RPO / REC complied in MU
		Solar	Non-Solar	Solar	Non-Solar	
From 10th September 2015 to 31st March 2016	20.09	0.10	0.50	0.74	78.84	78.98
2016-17	94.07	0.47	2.35	3.14	121.27	121.58
2017-18	208.67	1.04	5.22	9.95	138.01	141.71
2018-19	178.40	0.89	4.46	4.00	142.87	141.52
2019-20	139.32	0.70	3.48	0	116.32	112.14
2020-21	216.31	1.08	5.41	0	96.28	96.79
Total	856.85	4.28	21.42	17.83	693.59	685.71

12. In view of the above, the petitioner has prayed the Commission to: (i) recognize the aforesaid WHRB based captive power plants as cogeneration power plants and relax and exempt the petitioner from applicability of renewable purchase obligation and compliance thereof; and (ii) allow the surplus solar REC, non solar REC and cogeneration energy to be carried forward and offset against Current and future Solar and Non-Solar Obligation.
13. The respondent, OREDA has submitted that the petitioner as such has no Renewable Energy Power Plant for their own use. As per the record of www.recregistryindia.nic.in, the petitioner has purchased 17089000 kWh quantum of solar RECs and 36280000 kWh quantum of non-solar RECs from the Power Exchanges during the second control period. However, during the period from 10.09.2015 to 31.03.2019 the petitioner has reported to have consumed 856.85 MUs of power from their own co-generation unit. If the WHRB based power plants of the petitioner are recognized as co-generation power plant and the power generated from such plant is considered as renewable power, the Commission may consider relaxing the provision of applicability of RPO and compliance thereof.
14. The petitioner in response to OREDA's reply has stated that ASL has purchased 17831000 nos. of Solar REC. The difference of 742000 kWh i.e. 742 nos. of Solar REC is because OREDA might not have considered the 742 nos. of Solar REC purchased by ASL in FY 2015-16.

15. Heard the parties. The Commission observed that under Section 86(1)(e) of the Electricity Act, 2003, the Commission is mandated to promote co-generation and generation of electricity from renewable sources of energy. Therefore, the Commission is of the view that there should not be any Renewable Purchase Obligation on the quantum of consumption of electricity from co-generation sources. However, as per various orders of the APTEL, the Commission has passed the following Order dated 08.12.2020 in Case No. 66/2019, in the matter of exemption and relaxation from applicability of RPO and compliance thereof to M/s. Tata Steel Ltd. which generates such captive co-generation power from waste heat recovery process:

“16. Heard the parties at length. The Commission observed that as per the OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015, the petitioner company is an obligated entity since it consumes electricity from its CGPs having capacity of 1 MW and above and also procures power through open access for its use. In the present application the petitioner has submitted that its CGPs are having co-generation facility and cited various judgements of Hon’ble APTEL in respect of relaxation of RPO in case of Co-generation power plants.

17. Therefore, considering the various judgements of the Hon’ble APTEL as submitted by the petitioner and its prayer, this Commission is inclined to relax the provision for industry of the Petitioner having co-generation CGP under Regulation 12.6 and 12.7 of the OERC RPO Regulations, 2015, towards its obligation for meeting renewable purchase obligation treating the Petitioner as a co-generation plant. The petitioner shall be exempted from Renewable purchase Obligation when its consumption from cogeneration CGP is more than its Renewable Purchase Obligation for the respective time period. This is because the petitioner also avails its power from sources other than Cogeneration CGP. OREDA shall monitor its Cogeneration Consumption and Renewable purchase obligation accordingly. The relaxation shall be applicable from FY 2019-20 onwards since the transaction of REC has already been settled for past periods. We are relaxing the provisions of the Regulation on the basis of the judgement of Hon’ble APTEL and the said judgements have not dealt with any refund of REC and a settled thing cannot be unsettled now. The petitioner shall provide necessary data/information on its consumption and generation and also power availed through open access, to OREDA as and when required by it for verification with regard to RPO compliance.”

16. The Commission observed that in the instant case the Petitioner M/s. Aarti Steels Ltd., Ghantikhal, Cuttack has CGPs of 40 MW and 50 MW Capacity having co-generation facilities. Therefore, the directions of the Commission in the aforesaid Case No. 66/2019 dated 08.12.2020 shall be applicable to M/s. Aarti Steels Ltd. in the present case for relaxation of the provisions under Regulations 12.6 and 12.7 of the OERC RPO

Regulations, 2015 towards meeting RPO treating the Petitioner's WHRB based captive power plants as co-generation plants. Hence, the Petitioner shall be exempted from Renewable Purchase Obligation when its consumption from its co-generation sources is more than its Renewable Purchase Obligation for the respective time period. The state agency OREDA shall compute the RPO of the Petitioner based on its total consumption and compare the same with the consumption from its co-generation sources from FY 2015-16 till FY 2020-21. We observe that there is a mismatch of data furnished by both the parties on availability of excess RECs purchased by the petitioner during the period from FY 2015-16 to 2018-19. OREDA is directed to re-verify and compute the excess RECs available with the petitioner starting from FY 2015-16 till FY 2020-21. The petitioner is therefore allowed to carry forward the excess RECs so computed and verified by OREDA. However, the Commission does not accept the prayer of the petitioner to carry forward and offset the surplus co-generation energy of a year to the future years. The petitioner is directed to provide the data/ information as required by OREDA for computation of RPO. OREDA may also collect the required data/ information from the office of EIC and SLDC for verifying the compliance data provided by the Petitioner. The EIC and SLDC are directed to provide the required data for the purpose as and when sought by OREDA.

17. The case is accordingly disposed off.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson