

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Present - **Sri. T.M.Manoharan, Chairman**
Sri. K.Vikraman Nair, Member
Sri. S.Venugopal, Member

OP No. 01/2016 and OP No. 02/2016

In the matter of : Sale of Renewable Energy Certificates (RECs) directly to Kerala State Electricity Board Ltd (KSEB Ltd)

OP 01/2016

Petitioner : M/s INDISL Hydro Power and Manganese Ltd,
M/s INDSIL House, T V Swamy Road (West),
R S Puram, Coimbatore - 641002.

Respondent : Kerala State Electricity Board Ltd.,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram, Pin No. 695 004.

OP 02/2016

Petitioner : M/s Sreesakthi Paper Mills Ltd.,
Sreekailas, 57/2993-94,
Palam Road, Ernakulam.

Respondent - Kerala State Electricity Board Ltd.,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram, Pin No. 695 004.

Common Order dated 29.03.2016

Introduction

1. M/s INDSIL Hydropower and Manganese Ltd,. (INDSIL), a captive generator in the state, having a 21 MW SHP at Kuthumkal, Idukki district, Kerala, had filed a petition before the Commission, requesting to issue a direction to KSEB Ltd, to purchase Renewable Energy Certificates (RECs) on a regular basis from M/s

INDSIL, from the renewable energy generators within the state. The prayer of the petitioner is extracted below.

'It is prayed that, the Hon'ble Commission may kindly accept this petition and consider its powers under Section 86(1) E of the Indian Electricity Act, also consider, its latest notification mandating KSEB Ltd to procure Renewable Energy preferentially from units within the State and issue appropriate orders/ instructions to KSEB Ltd to procure petitioner's current balance quantum of 93471 RECs directly and also issue orders to KSEB L to procure future RECs directly on a regular basis adopting the same methodology.

2. M/s Sree Sakthi Paper Mills Ltd, a captive generator having a biomass based Captive Power Plant; Ernakulam had also filed a petition requesting the Commission to issue a direction to KSEB Ltd to purchase Renewable Energy Certificates (RECs) of the petitioner issued by National Load Despatch Centre (NLDC). The prayers of M/s Sree Sakthi Paper Mills are

- (1) To direct first respondent Kerala State Electricity Board to purchase the Renewable Energy Certificates (REC) of the petitioner issued by the National Load Dispatch Centre, within a time limit fixed by the Commission and to continue to purchase the said certificates in future without failure .

- (2) To grant such other reliefs that may be deemed just and proper by this Honourable Commission and to allow this petition.

3. The petition of M/s INDSIL Hydro Power and Manganese Ltd was admitted as OP No 01/2016 and the petition of M/s Sree Sakthi Paper Mills Ltd was admitted as OP No 02/2016. Both the petitions were heard together at Court Room of the Commission on 04.02.2016. In the hearing on 04.02.2016, Sri. Vinod Narsimhan, presented the case of M/s INDSIL Hydro Power and Manganese Ltd and Adv. Jose.J.Mathiekal, presented the case for M/s Sree Sakthi Paper Mills Ltd, before the Commission. Sri. N. Venugopal, Chief Engineer (Commercial & Tariff) and Sri. B. Pradeep, Deputy Chief Engineer, presented the objections on behalf of KSEB Ltd and submitted the counter affidavits in OP No: 01/2016 and 02/2016.

4. The summary of the arguments by the petitioners M/s INDISIL Hydro and Manganese Ltd, M/s Sreesakthi paper mills Ltd and the respondent KSEB Ltd are discussed below:

M/s INDISIL Hydro Power and Manganese Ltd

5. *M/s INDISIL Hydro Power and Manganese Ltd submitted that,*

- (i) *They are a captive generator in the State with an installed capacity of 21 MW SHP at Kuthumkal, Idukki district. The power plant was commissioned in the year 2001.*
- (ii) *The power plant is an accredited RE generator as on 16-01-2012, under REC mechanism promulgated by CERC.*
- (iii) *Currently the RE generator is holding a quantum of 93471 RECs as on 30th November-2015 in its credit.*
- (iv) *The petitioner came to understand that, the Commission has passed orders mandating KSEBL to remit Rs 125.00 crores towards REC.*
- (v) *The petitioner is prepared to sell the existing quantum of 93471 RECs directly to KSEB Ltd at the floor price instead of selling through Indian Energy Exchanges.*
- (vi) *The petitioner is also prepared to sell future RECs to KSEBL directly in the same manner at the floor price or market price which ever is available.*
- (vii) *The direct sale is possible, if the Hon'ble Commission passes orders given its power under section 86(1) E of the Indian Electricity Act because the SERCs has powers under the Act for the promotion, generation and purchase of renewable energy with in the State.*
- (viii) *The Clause-8 of the KSERC (Renewable Energy) Regulations, 2015 specified that, "Every obligated entity shall purchase the quantum of renewable energy required to meet its renewable purchase obligation preferentially from the renewable energy generating units within the State if available and priority shall be given to the purchase from the renewable energy generating units which commenced commercial operation earlier:*
- (ix) *Clause-9 of the KSERC (Renewable Energy) Regulations, 2015 specified as follows.,*
 - (1) *If any obligated entity fails to satisfy fully its renewable purchase obligation during any financial year, it shall purchase certificates to make good such short fall.*
 - (2) *Subject to the terms and conditions in these regulations, the certificates shall be the valid instruments for the discharge of the mandatory renewable purchase obligation of an obligated entity.*
- (x) *Since the petitioner is a renewable energy unit within the State of Kerala having commenced commercial operation much earlier and is one among the very few accredited RE generators within the State, Hon'ble Commission can issue appropriate orders to KSEB Ltd to purchase RECs directly on a regular basis at the floor price or market price whichever is applicable from the renewable energy generators within the State.*
- (xi) *The petitioner prayed before the Commission to issue appropriate orders/ instructions to KSEB Ltd to procure the petitioners' current balance quantum of 93471 RECs directly and also issue orders to KSEB Ltd to procure future RECs directly on a regular basis adopting the same methodology.*

M/s Sree Sakthi Paper Mills Ltd

6. *M/s Sree Sakthi Paper Mills Ltd submitted that,*

- (i) They commissioned a 2.2 MW Biomass based renewable energy unit at their factory premise at Ernakulam using Bio-mass based raw material comprising more than 86% sawdust and paddy husk and less than 14% coal.*
- (ii) The petitioner obtained the following registrations/accreditations for their power plant.*
 - a. Accreditation No. KLONSSSPML001A1611112 dated 16/11/2012 issued by ANERT.*
 - b. REC Registration No. KLONSSSPML001R121212 dated 12/12/2012 issued by the Central agency.*
 - c. Registration with Indian Energy Exchange Limited.*
 - d. Registered with Power exchange*
- (iii) The petitioner started generation of electricity through the new plant in December-2012 and REC received from the Central Agency namely NLDC (National Load Dispatch Centre). As on October 2015, the petitioner produced 2,11,00,000 units of electricity (from December 2012 to October 2015) and thus were eligible for 21,029 RECs, as on December 2015 and were able to sell 7898 RECs only.*
- (iv) As per regulation 4 of KSERC (Renewable Energy Regulations) 2015, the distribution licensee has to purchase renewable energy as stipulated by the Commission and ANERT has been designated as the state agency to monitor the compliance of the renewable energy purchase. ANERT has found that there is shortage in renewable energy purchase by KSEB Ltd when compared to the stipulation. Moreover, Commission has ordered KSEB Ltd to deposit Rs 125 crore for purchase of RECs if the distribution licensee fails to satisfy its renewable purchase obligation.*
- (v) The licensee has to purchase the RECs as stipulated in the KSERC (Renewable Energy Regulations) 2015. Therefore purchase of REC is equivalent to purchase of renewable energy. As per regulation 8 of KSERC (Renewable Energy Regulations) 2015, preference has to be given for the purchase of renewable energy from renewable generation units within the state; similarly preference has to be granted for the renewable energy generation unit who has obtained renewable energy certificates as per renewable energy regulation of CERC.*

- (vi) *As per regulation 9 of KSERC (Renewable Energy Regulations) 2015, if any obligated entity fails to satisfy fully its renewable purchase obligation during any financial year, it shall purchase certificates to make good such shortfall.*
- (vii) *As per regulation 8 of the notification No.442/ CT/ 2015, every obligated entity shall purchase their required renewable energy to meet its renewable purchase obligations preferentially from the renewable energy generating unit within the State of Kerala.*
- (viii) *The petitioner further request to give the same preference granted to renewable energy unit within the State of Kerala for purchase of energy to those renewable energy unit who has already obtained the REC as per the regulations of CERC.*
- (ix) *The petitioner requests Commission to issue orders to KSEB Ltd to purchase RECs directly from the petitioner on the basis of floor price since the petitioner's renewable energy generating unit is within the state and also since KSEB Ltd has failed to exercise the statutory obligation of purchase of RECs.*
- (x) *The petitioner has invested Rs 16.55 crore for the construction of the power plant for generation electricity from biomass. On account of the setback in the sale of RECs, the petitioner is facing huge financial loss. Petitioner established the generation unit totally relying on the incentives declared through statutes.*
- (xi) *The petitioner is ready to offer the total of 13131 RECs readily available with them, at floor rate fixed by CERC, to KSEB LTD as per the direction of the Hon'ble Commission.*

Summary of counter affidavits submitted by respondent –KSEB Ltd

7. *M/s KSEB Ltd filed the counter affidavits in OP No: 01/2016 and in OP No: 02/2016 before the Commission on 03.02.2016.*

M/s KSEB Ltd has submitted the following in OP No: 01/2016 and in OP No: 02/2016:

- (i) *Hon'ble Commission is bound by the order issued by it on the same matter in an earlier occasion, as per law laid by Hon'ble Supreme Court.*
 - a) *the issue of direct sale of REC of a generator to a licensee was decided by the Commission vide its order dated 23-04-2014 in Petition No. OP 31/2013 filed by M/s Sreesakthi Paper Mills Ltd and decided that, the plea of the petitioner to direct KSEB Ltd to purchase REC of the petitioner cannot be allowed.*
 - b) *As per the law laid down by the Hon'ble Supreme Court, any forum while deciding a case should respect the views expressed in the earlier Judgment by same or higher forum. The Hon'ble Supreme*

Court in 2005 (2) SCC 673 Central Board of Dahwoodi Borah Community and another Vs. State of Maharashtra & Anr while considering the question whether the law laid down by a bench of larger strength is binding on a subsequent bench of lesser or equal strength held that “having carefully considered the submissions made by the Senior Counsel for the parties and having examined the law laid down by the constitution benches in the above said decision we would like to sum up the legal position in the following terms. The law laid down by this Hon’ble Court in a decision delivered by a bench of larger strength is binding on subsequent bench of lesser or co-equal strength.”

c) In view of the law laid by Hon'ble Apex court and the decision of this Hon'ble Commission on the same matter, it is submitted that the petition shall be dismissed.

(ii) REC is a National level mechanism to balance imbalances in renewable resources across the country and thus only CERC has jurisdiction in the manner of trading in Renewable Energy Certificates (REC).

a) As per the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, the Renewable Energy certificate (REC) mechanism is a market based instrument evolved by the Central Commission to promote renewable energy and facilitate renewable purchase obligation (RPO).

b) The Central Commission vide the Statements of Objects and Reasons on the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, had explained the framework of the said regulation as submitted below:

1) By the proposed regulation, Hon’ble Commission has divided the cost of electricity from RE sources into two components.

- Cost of electricity generation equivalent to conventional sources, and*
- The cost of environmental attributes.*

2) The RE generators has two options to sell the electricity generated.

- Either to sell electricity generated from the RE plant at the preferential tariff (cost plus/ levelised tariff) approved by the State Commissions, OR*
- To sell electricity to the local distribution licensee at the ‘Average Pooled Power Purchase Cost’ approved by the State Commission on year to year and ‘sell the environmental attributes’ separately’ as per the REC mechanism evolved by the Central*

Commission and exchanged in the form of Renewable Energy Certificate.

- 3) *REC could be purchased by the obligated entities to meet their RPO and purchase of REC would be deemed as purchase of RE for RPO compliance.*
- c) *Thus as per the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, the Renewable Energy certificate (REC) mechanism is a market based instrument evolved by the Central Commission to promote renewable energy and facilitate renewable purchase obligation (RPO).*
- d) *The regulation-8 of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, specifies the methodology for dealing with Renewable Energy Certificate, which is extracted below.*

Quote:

“8. Dealing in the certificates

(1) Unless otherwise specifically permitted by the Commission by order, the Certificates shall be dealt only through the Power Exchange and not in any other manner.

(2) The Certificate issued to eligible entity by the Central Agency may be placed for dealing in any of the Power Exchanges as the Certificate holder may consider appropriate, and such Certificate shall be available for dealing in accordance with the rules and byelaws of such Power Exchange:

Provided that the Power Exchanges shall obtain prior approval of the Commission on the rules and byelaws including the mechanism for discovery of price of the Certificates in the Power Exchange.”

Unquote:

- e) *Unless otherwise specifically permitted by Central Commission through order, the REC can be dealt only through Power Exchanges and not in any other manner. It is also respectfully submitted that the ambit of REC regulations does not allow the State Electricity Regulatory Commissions to issue orders to licensees to purchase RECs directly from the generators, unless otherwise specifically permitted by the Central Commission by order.*
- f) *With respect to the jurisdiction of the Central and State Commission on REC mechanism, Hon'ble CERC vide the Paragraph 8.II of the statement of Objects and Reasons of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (First Amendment) Regulations, 2010 has clearly stated that since REC is a national level framework, jurisdiction in terms of 'eligibility criteria' for*

participation in REC scheme, registration of RE generators, issuance of REC, and transactions in PXs etc., clearly vests with Hon'ble CERC. The relevant paragraph of the order is extracted below:

“Findings of the Commission

The Commission has noted the observation and would like to clarify that the REC scheme as evolved clearly demarcates the responsibility of CERC and SERC in line with the provisions of the Electricity Act, 2003. Given the fact that REC is a national level framework, jurisdiction in terms of ‘eligibility criteria’ for participation in REC scheme, registration of RE generators, issuance of REC, and transactions in PXs etc., clearly vests with CERC. The role of SERC is in recognizing REC as a valid instrument for meeting RPO.”

g) The State Commission lacks jurisdiction to consider the petition as the relief sought by the petitioner in the petition is related to ‘Renewable Energy Certificate’ mechanism which is a national level mechanism, the terms and conditions of which are governed by the provisions of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Generation) Regulations, 2010 and its subsequent amendments issued by Hon'ble Central Commission.

h) In view of the above framework put in place by Hon'ble Central Commission, it is humbly submitted that the petition may be dismissed since the prayers made are contrary to the lawful scheme under the Act.

(iii) Withdrawal of REC mechanism for captive generators is under active consideration of CERC.

a) As per the CERC (Terms and conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, only sale of electricity from CPPs over and above the captive consumption and who have satisfied the eligibility criteria were eligible for qualifying for RECs since such sale is to be treated as sale from equivalent other RE generators in IPP mode.

b) Subsequently, considering the fact that self consumption of electricity by a CPP generated from renewable energy replaces the demand from the grid power and the entity having such self consumption in effect incurs comparatively higher costs vis-à-vis the cost of the power obtained from grid, CERC decided to include self consumption of electricity by a CPP from RE sources also eligible for participating in REC mechanism if it has not availed promotional/concessional benefits from the utilities. It is submitted that even though the existing REC regulation makes only grid connected RE generator eligible for REC, REC eligibility was extended to self consumption of captive consumers also by treating the self consumption as deemed injection to grid.

- c) Accordingly, CERC vide the notification No. L-1/12/2010-CERC dated 29th September-2010 issued amendment to the REC regulations, allowing the Captive Power Producers (CPPs) based on RE sources also, eligible for REC scheme for the entire energy consumed by the CPP from RE sources, subject to the condition that, the CPP does not avail or proposed to avail any benefit in the form of concessional/ promotional transmission or wheeling charges and banking facility.
- d) However, as REC mechanism is introduced as an alternate mechanism for cost recovery by RE generators, making a captive generator eligible for REC had always raised concern and apprehension among stakeholders and utilities mainly because, for a captive generator, the high cost of RE generation is already compensated by reduced drawal from the grid at high tariff. Providing REC for his captive consumption also is an additional benefit for the captive generators, unlike other RE generators who receives only APPC for the electricity generated and sold.
- e) Further, in the case of old captive generating plants, the cost recovery for the RE generation installed have already been made. Hon'ble CERC has recognized that the revenue realization from captive generating plants are higher than sale through APPC or under feed-in tariff mode and the same is detailed in the SOR of Third Amendment of CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Third Amendment) Regulations, 2014 as extracted below.

Quote:

“The REC mechanism is an alternative cost recovery mechanism. Therefore, it is required to be compared with the tariff of a particular renewable technology. The table below shows comparison of net revenue realization under APPC, CGP & Open Access and PPA at tariff determined by the Commission.

The above table clearly shows that the realization in some of the States like Andhra Pradesh, Maharashtra, Himachal Pradesh and Tamil Nadu for Captive or Open Access route is higher than the tariff determined for major renewable energy resources in the State. In States like Gujarat and Himachal Pradesh, revenue realization under APPC plus REC is more than the renewable energy tariff determined by the Appropriate Commission. Different commercial mechanisms are available for the investors to make appropriate investment decision. Further, the Captive Generating Plants located in various States also have the Electricity Duty waiver benefit. If these benefits are considered, the revenue realization from captive generating plant would be much more than that from project selling electricity under APPC or under FiT.”

Unquote:

- f) *In continuation to the above, CERC vide its order dated 30-12-2014 on third amendment to REC regulations, 2010 had issued the following order on the eligibility of a CGP for REC as extracted below.*

“REC multiplier for CGP

Several stakeholders have commented on the proposal of the Commission to the concept of multiplier for REC projects based on captive consumption or open access route. The comments vary depending upon the interests the stakeholders represent. There are, however, prevailing views that the captive consumption from a CGP is already adequately compensated in terms of saving on the tariff because of less procurement of power from the distribution companies. Generally, the CGPs are either commercial or industrial consumers and as such, save equivalent to the applicable tariff for such consumer categories. When compared to the sale rate for electricity component at APPC, this compensation is already on the higher side. This makes a case for reviewing the provision relating to eligibility of CGP for REC. In fact, it was on this count that the concept of reduced multiplier was proposed by the Commission for CGP. However, given the various dimensions brought out by the stakeholders and with due regard to the fact that the CGPs are already adequately compensated for the electricity component, the Commission is of the view that the CGPs be disallowed from participating in the REC Scheme.

It would be pertinent to mention that the CGPs were extended the benefit of REC at the initial stage of introduction of REC framework. The argument extended was that they are also substituting the conventional power. Another reason why the CGPs were brought under REC fold was to create liquidity in the REC market at its infancy. Even today, it remains a fact that a CGP based on renewable sources does substitute conventional power, but the Commission cannot ignore the fact that they are already being compensated for such substitution. The compensation becomes all the more remunerative with increasing tariff for consumer categories like commercial and industrial.

It also remains a fact that the huge inventory in the REC market today is contributed largely by the CGPs. Around 50 % of the total number of projects accredited/registered under the REC framework belongs to CGP, and a good majority of them are CGPs set up prior to the introduction of the REC framework. Even in cases where some CGPs have been set up after the introduction of REC Scheme, it is highly unlikely that such projects would have got financing based on the revenue from REC sale. The Commission is, therefore, of the view that withdrawing the benefit of REC to the CGP would not amount to any reversal of policy or regulation having the impact on the investment already made by the investors. In view of the above observations, the Commission intends to review the provision regarding eligibility of CGP for REC.

However, as this proposal was not floated for public comments as part of the present regulatory dispensation, the Commission directs the staff to come out with a fresh proposal in this regard. Till such time, the present proposal of the Commission for introducing multiplier (0.5 REC for 1 MWh of electricity generated) for CGP is kept abeyance.”

g) As extracted above,

- i. The CGPs were extended the benefit of REC at the initial stage of introduction of REC framework mainly because they are substituting the conventional power. Another reason why the CGPs were brought under REC fold was to create liquidity in the REC market at its infancy.*
- ii. With due regard to the fact that the CGPs are already adequately compensated for the electricity component, CERC is of the view that the CGPs be disallowed from participating in the REC Scheme.*
- iii. CERC has, therefore, initiated steps to withdraw the benefit of REC to the CGP and CERC is of the view that this reversal of policy or regulation will not have any impact on the investment already made by the investors. In view of the above observations, the CERC intends to review the provision regarding eligibility of CGP for REC.*

h) KSEB Ltd further submitted that, CERC has already initiated steps to withdraw the eligibility for REC by CGP, considering the fact that the CGPs are already adequately compensated for the electricity component, by way of substituting costly conventional grid power. Hence there is apprehension that allowing the prayer of the petitioner will result in undue enrichment of private captive generators, while their eligibility in itself is being reviewed by Hon'ble Central Commission. Accordingly it is submitted that the petition may be dismissed being inconsistent with the scheme of REC.

(iv) KSEB as the distribution licensee is willing to take steps to fulfill the Renewable Purchase Obligation stipulated by Hon'ble State Commission in a fair and reasonable manner.

- a) KSEB Ltd submitted that, any expense towards procurement of REC without the electricity component, will ultimately affect the consumers of this state, as any liability on KSEB Ltd in this regard is passed on to the consumers through tariff.*
- b) However, considering the shortfall in RPO achievement of KSEB Ltd, it is submitted that KSEB Ltd can consider procuring the entire energy generated by the petitioner through RE sources at the preferential tariff specified by Hon'ble Commission as under.*

- *KSEB Ltd can purchase Renewable energy from the petitioner at the tariff determined under sections 61 & 62 of the EA,2003 by Hon'ble Commission (preferential tariff), if the petitioner is agreeable to the same and the quantum of said purchase shall be allowed to be accounted towards the RPO of KSEB Ltd.*
 - *The purchase of power from the petitioner by KSEB Ltd at preferential tariff will enable the petitioner to recover all the genuine expenses of the petitioner towards RE generation.*
 - *Purchase of power from the petitioner instead of purchase of RECs directly from the petitioner will ensure that provisions of CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations are fully complied with.*
 - *Further, purchase of power instead of RECs will benefit the State and the consumers of this State and the action is well within the ambit of the regulations issued by Hon'ble CERC and Hon'ble State Commission.*
- (v) *KSEB Ltd has further submitted that, in OP No. 02/2016, the petitioner M/s Sreesakthi Paper Mills has suppressed the order of the Commission dated 23.4-2014 in OP No.31/2013.*
- a) *The petitioner, M/s Sreesakthi Paper Mills had raised the same matter before this Hon'ble Commission vide petition no. OP 31/2013, and Hon'ble Commission vide order dated 23-4-2014 had disposed off the matter ordering that the plea of the petitioner to direct KSEB Ltd to purchase REC of the petitioner cannot be allowed. It was ordered by this Hon'ble Commission that unless otherwise specifically notified by Hon'ble Central Commission through orders, the REC can be dealt only through power exchanges and not in any other manner. The relevant paragraph of the order dated 23-4-2014 is extracted below.*

“Analysis and Decision of the Commission:

The plea of the petitioner is to direct KSEB to purchase the REC held by the petitioner. The single issue to be decided in this case is whether the State Commission is empowered to issue such a direction to a Licensee. In other words whether the REC can be transacted directly between a seller and a buyer? The REC is a system developed to address the mismatch between availability of RE sources and the requirement of obligated entities to meet their RPO. The regulations on the issuance, transactions and other matters related to REC has been notified by Hon'ble CERC. The regulation-8 of the CERC (Terms and conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations,2010, specifies the methodology

for dealing with Renewable Energy Certificate. The said regulation-8 is extracted below.

Quote:

“8. Dealing in the certificates

Unless otherwise specifically permitted by the Commission by order, the Certificate shall be dealt only through the Power Exchange and not in any other manner.

The Certificate issued to eligible entity by the Central Agency may be placed for dealing in any of the Power Exchanges as the certificate holder may consider appropriate, and such certificate shall be available for dealing in accordance with the rules and bye laws of such Power Exchange:

Provided that the Power Exchanges shall obtain prior approval of the Commission on the rules and bye laws including the mechanism for discovery of price of the Certificates in the Power Exchange.”

Unquote:

As detailed above, unless otherwise specifically notified by Central Commission through orders, the REC can be dealt only through Power Exchanges and not in any other manner. Hence it is clear that this plea of Petitioner to direct KSEB Ltd to purchase REC of the petitioner cannot be allowed.”

- b) *The petitioner had neither sought a review of the above order nor filed any appeal against the order of Hon'ble Commission before any higher judicial forums. Hence the order dated 23-4-2014 of this Hon'ble Commission in OP 31/2013 in the same plea of the petitioner to direct KSEB Ltd to purchase REC of the petitioner has attained finality.*
- c) *However, the petitioner, in the instant petition has again raised the same issue by hiding the fact that the matter was earlier decided by the Commission.*
- d) *Suppression or concealment of material facts is impermissible in proceedings before a statutory forum. It is of utmost necessity that the petitioner approaching the Hon'ble Commission must come with clean hands, put forward all the facts before the Hon'ble Commission without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Hon'ble Commission, his petition may be dismissed without considering the merits of the claim.*
- e) *This well settled law has been deliberated in detail by Hon'ble Supreme Court in Civil Appeal No.4270 of 2008 in K.D.Sharma vs Steel Authorities Of India Ltd. as extracted below.*

"[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

26. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it."

Considering the above law laid by the apex court, it is respectfully submitted that the petition shall be dismissed."

Summary of the additional submission by the petitioners.

8. M/s INDSIL submitted the rejoinder to the counter affidavit filed by KSEB Ltd' on 24/02/2016 and submitted that,
 - (i) The petitioner approached Commission subsequent to the notification on KSERC (Renewable energy) regulations 2015 notified on 11.11.2015. The Regulation-8 of the said regulation mandates the local distribution licensee namely KSEB Ltd, to bestow priority to renewable energy units within the state for purchase of renewable energy and regulation 9 goes on to add that if renewable purchase obligations are not met by direct purchase of renewable energy, REC would suffice as an alternative.
 - (ii) The petitioner further submitted that,
 - a) The order relating to Sree Sakthi Paper Mills was prior to the notification of KSERC dated 11/11/2015 and submits that the petition submission is based on the provisions in KSERC (Renewable energy) regulations 2015.

- b) The petitioner understands that RECs presently can be sold only through power exchanges and any change in such procedure requires an order from CERC and points out the following;
- Power exchange is purely a delivery mechanism for RECs. The essence of the mechanism is to promote renewable energy generation. The petitioners RECs do not lose its essence because of the absence of an exchange. However since the CERC has the requirement of an exchange and it is a technicality that needs to be overcome, the petitioner is prepared to offer the RECs on the exchange platform in the form of a bulk deal which can be organized between any buyer and seller through the exchange.
 - Exchanges throughout the country offer a mechanism where buyers and sellers mutually deal with each other during exigencies or in times of extreme requirements. Such a monthly arranged sale and purchase through every exchange will also satisfy the Commission's mandate in clauses 8 and 9 of KSERC (Renewable energy) regulations 2015 regarding preference to local renewable energy generators in Kerala.
- c) The assertion of KSEB Ltd regarding the cancellation of REC status for captive power generators by CERC is not relevant as it is still in the proposal stage and it will not take away the status of RECs currently held by the petitioner.
- d) The petitioner is of the view that there is still a possibility of sale of RECs from the petitioner to the distribution licensee directly with a mutual consent in the power exchange and governed by the power exchange itself in the form of a single time, bulk deal and that for such a mechanism, a complete consent of KSEB Ltd and mutual approach is required.

9. M/s Sree Sakthi Paper Mills submitted rejoinder on 15.02.2016 in OP No: 02/2016 in reply to counter affidavit submitted by KSEB Ltd and submitted that,

- a) Renewable Purchase Obligation is a statutory obligation of obligated entity namely KSEB Ltd.
- b) KSEB Ltd has not achieved their Renewable Purchase Obligation for the last several financial years as found by the Commission.

- c) As per sub regulation 6 of regulation 9 of KSERC (Renewable Energy Regulations) 2015, the obligated entity shall deposit with the Commission, the RECs purchased by it, with a report on the compliance of its RPO.
- d) The petitioner is ready for sale of RECs which are in surplus with them and having no market.
- e) Renewable Energy Certificate is a mechanism created by CERC, as an incentive for renewable energy generation. The petitioner started the generation unit in 2012 believing that income will come from these incentives also.
- f) Commission is authorized by the Section 86(1(e)) of Electricity Act 2003, to provide suitable measures for sale of electricity to any person and specify for the purchase of electricity from renewable sources a percentage in the area of a distribution licensee. Purchase of REC is another form of purchasing energy.
- g) KSEB Ltd which is an obligated entity is not interested in purchasing RECs because according to them it is not profitable. Making profit is not a matter to be considered when there is failure on the part of obligated entity to fulfill their statutory obligation.
- h) On account of the failure of KSEB Ltd to achieve RPO during the last financial years, KSEB Ltd is facing a direction from the Commission to remit Rs 125 Crores as penalty.
- i) In the counter affidavit dated 03/02/2016, submitted by KSEB Ltd the following points were raised by KSEB Ltd
 - (i) Suppression of relevant facts.
 - (ii) Honorable Commission is bound by their previous order.
 - (iii) Renewable Energy Certificate Mechanism is in national level and CERC alone is having jurisdiction in the matter of trading of those certificates.
 - (iv) There is a proposal on the part of CERC to withdraw REC mechanism for captive generators.
 - Regarding the first and second objections of KSEB Ltd, the petitioner has submitted that OP No 2/2016 was drafted on the basis of the Kerala State Electricity Regulatory Commission (Renewable energy) Regulations 2015 in which specific provisions were added regarding the manner in which Renewable Energy Certificates are to be dealt with. The order in OP No.

31/2013 was issued by this Honorable Commission in the year 2014 when the 2015 Regulations were not framed. The grounds raised in the current petition are based on the provisions relating to Regulation 2015. Principles laid down in the Supreme Court decision cited by the KSEB Ltd in KD Sharma case is irrelevant in the facts and circumstances of this case. The petition in OP No 2/2016 filed by the petitioner is liable to be considered by this Honorable Commission in the light of the new Regulations 2015 which could not be done in OP No. 31/2013 in the year 2014. Therefore the facts and circumstances in OP No. 2/2016 is different from OP No 31/2013 and the contentions 1 and 2 of the KSEB Ltd regarding suppression of relevant materials and binding nature of order in OP No. 31/2013 are unsustainable.

- Regarding the 3rd and 4th contentions it is submitted that the statements of KSEB Ltd is based on the proposals by CERC to stop Renewable Energy Certificate Mechanism for captive generators. Commission can consider the contention if and only if the CERC implements those proposals. The Renewable Energy Certificates issued to the petitioner till such time are valid, and the subject matter in this case is regarding the purchase of the legally valid RE certificates by the obligated entity. Such unreasonable contentions are not expected from a responsible institution like the KSEBL. Reading of Section 86 [1](e) of the Electricity Act, 2003 with Regulations 4,8 and 9 of the KSERC (Renewable energy) regulations 2015 makes it crystal clear that this Honorable Commission is legally empowered to interfere in the dispute raised in this petition. Regulation 9 (5) of 2015 Regulations says that subject to such direction as the Commission may issue from time to time, the obligated entity shall be bound to act consistent with the provisions of the REC regulations for procurement of certificates for fulfillment of RPO under these regulations. REC regulations mean the CERC (Terms and Conditions for Recognition and issuance of Renewable Energy Certificates for Renewable Energy Generation) Regulations 2010. As per Regulation 8 of the REC regulations, the RE Certificates shall be dealt with only through power exchanges and not in any other manner. But as per Regulations 9(6) of the 2015 regulations of KSERC, the obligated entity shall deposit with the Commission the certificates purchased by it from the Power exchange with a report on the compliance of its RPO. Regulation 10 (3) insists the State agency the ANERT also to submit quarterly report to the Commission in respect of compliance of RPO of the obligated entities in the

format approved by the Commission and suggest appropriate action if any required for the compliance of the renewable purchase obligation by the obligated entity.

Analysis and decision of the Commission

10. The Commission has examined in detail the petition filed by M/s INDISIL Hydro Power and Manganese Ltd, M/s Sreesakthi Paper Mills Ltd, the counter affidavit filed by KSEB Ltd against the petitions, the rejoinder filed by the petitioners against the counter affidavit filed by KSEB Ltd.
11. The main prayer of both the petitioners is to issue a direction to the KSEB Ltd to procure the current balance of RECs available with the petitioners directly and issue orders to KSEB Ltd to continue to purchase RECs from them in future. The petitioners had claimed that, they filed the petitions based on the provisions in the KSERC (Renewable Energy) Regulation, 2015.
12. Regulation 9 of the KSERC (Renewable Purchase) Regulation, 2015, deals with the Purchase of Renewable Energy Certificates under REC Regulations. The Regulation-9 is extracted below for ready reference.

9. Purchase of Renewable Energy Certificates under the REC Regulations.-

(1) If any obligated entity fails to satisfy fully its renewable purchase obligation during any financial year, it shall purchase certificates to make good such short fall.

(2) Subject to the terms and conditions in these regulations, the certificates shall be the valid instruments for the discharge of the mandatory renewable purchase obligation of an obligated entity.

(3) If the quantum of renewable energy purchased from solar sources by an obligated entity falls short of its solar renewable purchase obligation as provided in sub-regulation (6) of regulation 4 or sub-regulation (7) of regulation 5 or sub regulation (2) of regulation 6 or sub-regulation (2) of regulation 7, as the case may be, during any financial year, such obligated entity shall purchase the solar certificates, to make good such shortfall.

(4) If the quantum of renewable energy purchased by an obligated entity falls short of its renewable purchase obligation, during any financial year, such obligated entity shall purchase non-solar certificates or solar certificates, to make good such shortfall, subject to the provisions in sub-regulations (1), (2) and (3) above.

(5) Subject to such direction as the Commission may issue from time to time, the obligated entity shall be bound to act consistent with the provisions of the REC Regulations, for the procurement of the certificates for fulfillment of the renewable purchase obligation under these regulations.

(6) The obligated entity shall deposit with the Commission the certificates purchased by it from the power exchange with a report on the compliance of its renewable purchase obligation.

13. The sub regulation (5) of Regulation-9 clearly provides that, the obligated entity is bound to act consistently with the provisions of the REC regulation. The clause (t) to Regulation (2) defines the REC regulation as

'(t) 'REC Regulations' means the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, as amended from time to time;

14. Regulation 8 of the CERC (Terms and Conditions for Recognition and Issuance of REC for RE generation) Regulations, 2010 specifies the methodology for dealing with Renewable Energy Certificates, which is extracted below for ready reference.

"8. Dealing in the certificates

(1) Unless otherwise specifically permitted by the Commission by order, the Certificates shall be dealt only through the Power Exchange and not in any other manner.

(2) The Certificate issued to eligible entity by the Central Agency may be placed for dealing in any of the Power Exchanges as the Certificate holder may consider appropriate, and such Certificate shall be available for dealing in accordance with the rules and byelaws of such Power Exchange:

Provided that the Power Exchanges shall obtain prior approval of the Commission on the rules and byelaws including the mechanism for discovery of price of the Certificates in the Power Exchange."

As detailed above unless otherwise specifically notified by Central Commission through orders, the REC can be dealt only through Power Exchanges and not in any other manner. Hence, the pleas of the petitioners to direct KSEB Ltd for direct purchase cannot be allowed.

15. The petitioners also raised the issue of direct purchase of Renewable Energy Certificates through Power Exchanges. This is against the detailed procedures approved by the Central Commission, vide the order dated 5th November, 2015, under CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010. The paragraph-1 to 3 to the Procedure for Redemption of Renewable Energy Certificate specifies the step wise description of the procedures for redemption of renewable energy certificates, which is extracted below.

PROCEDURE FOR REDEMPTION OF RENEWABLE ENERGY CERTIFICATE

1. INTRODUCTION

1.1. This procedure shall provide guidance to the entities to implement Renewable Energy Certificate mechanism as envisaged under Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by CERC and its amendments thereof, (hereinafter referred to as “**the CERC REC Regulations**”). This procedure shall be called ‘**Procedure for Redemption of Renewable Energy Certificates**’.

1.2. This procedure is issued in compliance to the Regulation 3(3) of the CERC REC Regulations and prepared in order to implement the CERC REC Regulations to facilitate development of market in power from renewable energy sources by issuance of „**Renewable Energy Certificates (REC)**“.

1.3. Words and expressions used in these Procedures and not defined herein but defined in the Act, the CERC REC Regulations or any other Regulations issued by the Central Commission shall have the same meaning assigned to them respectively in the Act, the CERC REC Regulations or such other Regulations issued by the Commission.

2. APPLICABILITY AND SCOPE

2.1. This procedure shall be applicable to the Eligible Entity that chooses to place the RECs for dealing in any of the Power Exchanges as the Certificate holder may consider appropriate and the eligible entity that chooses for self-retention of RECs through State Agencies.

2.2. This procedure shall be followed by the State Agencies, Central Agency, eligible entity and Power Exchange(s) while facilitating redemption of the renewable energy certificates.

3. STEP-WISE DESCRIPTION OF THE PROCEDURE

The basic procedure for redemption of renewable energy certificate(s) shall include following steps:

3.1. STEP 1: The Eligible Entity shall place for dealing of renewable energy certificates, both „Solar“ and „Non-Solar“ Certificates, on any Power Exchange authorised to deal in renewable energy certificates as per CERC Regulation & amendment thereof. The total quantity of Certificates („Solar“ and „Non-Solar“ separately) placed for dealing on the Power Exchange(s) by the eligible entity shall be less than or equal to the total quantity of valid Certificates held by the eligible entity as per the records of the Central Agency. The renewable energy certificates shall be dealt in the Power Exchange within the price band as specified by CERC from time to time.

3.2. STEP 2: During the time the bidding window opens in the Power Exchange(s), the eligible entities shall place their offers and the buyers shall place their bids through the trading platform of the respective Power Exchange.

3.3. STEP 3: *On closure of the trading window, the Power Exchange(s) shall send the maximum bid volumes for each of the eligible entity, which has placed offers on that Power Exchange, to the Central Agency for verification of the quantity of valid RECs available with the concerned eligible entity for dealing on the Power Exchange(s).*

3.4. STEP 4: *The Central Agency shall check the combined maximum bid volume in the Power Exchange(s) for each eligible entity against the quantity of valid RECs for that entity for both „Solar“ and „Non-Solar“ Certificates. The Central Agency shall send a report to Power Exchange(s) confirming the availability of the valid RECs with the eligible entity. In case the combined maximum bid volume placed for dealing in the Power Exchange(s) exceeds the quantity of valid RECs held by the eligible entity as per the records of the Central Agency, then, the Central Agency shall advise the Power Exchange(s) to exclude such bid(s) while working out the Market Clearing Price and the Market Clearing Volume.*

3.5 STEP 5: *The Power Exchange(s) shall work out the Market Clearing Price and the Market Clearing Volume taking into account the advise received from the Central Agency and send the final cleared trades to the Central Agency for extinguishing of the RECs sold in the records of the Central Agency. The certificates will be extinguished by the Central Agency in the „First-in-First-out“ order.*

16. As detailed above, as per the procedures approved by the Central Commission, the Central Agency has to confirm the availability of valid RECs for each eligible entities. Further, the certificates will be extinguished by the Central Agency in the 'First-in-First-out' order.
17. Renewable Energy Certificate is mechanism evolved by the CERC for promoting the renewable energy generation in the country through the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.
18. The REC can be dealt only as per the provisions in the Regulation-8 of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010. The redemption of the Renewable Energy Certificate shall be done as per the Annexure-IV of the approved procedures by the Central Commission vide the order dated 5th November 2015, for redemption of Renewable Energy Certificate. There is no provision in the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and under detailed procedures approved for redemption of Renewable Energy Certificate for direct sale of REC by an RE generator to an obligated entity. Hence the prayers of the both the petitioner M/s INDISIL Hydro Power and manganese Ltd and M/s Sree Sakthi Paper Mills Ltd to issue a direction to the KSEB Ltd to procure the

current balance of RECs directly and issue orders to KSEB Ltd to continue to purchase RECs in future, cannot be allowed.

Orders of the Commission

19. The petitions are dismissed. Ordered accordingly

Sd/-

K.Vikraman Nair
Member

Sd/-

S. Venugopal
Member

T.M. Manoharan, Chairman

Analysis and decision

1. The learned Members of the Commission have concluded the issue to an order dismissing the above petitions, under the facts and circumstances and the regulations explained therein. The undersigned has a different view in this regard which is expressed hereunder.
2. It is clarified that the order issued jointly by the learned Members which is the majority decision shall be the decision of the Commission for all purposes, whereas the views expressed and the decision taken by the undersigned will remain a minority decision.
3. The facts and arguments of the petitioners have already been explained in the majority decision of the learned Members. Based on the very same facts and the regulations relied upon, the following views are expressed by the undersigned.
4. As per clause (e) of sub-section (1) of Section 86 of the Electricity Act, 2003, the State Electricity Regulatory Commission is the only authority which has a duty and function to promote generation of electricity from renewable sources. As per the above statutory provision, the Commission has to promote generation of electricity from renewable sources by,-
 - (i) providing suitable measures for connectivity to the grid;
 - (ii) providing suitable measures for sale of electricity generated from renewable sources to any person; and

- (iii) specifying by regulations, for the purchase of renewable energy, a percentage of total consumption of electricity in the area of distribution licensee.
5. In view of the above statutory duties and functions, the Commission has issued the following regulations for fixing preferential generic tariff for the renewable energy generated from different categories of renewable energy sources and for fixing the renewable purchase obligation (RPO) of the licensees.
- (i) KSERC (Power Procurement from Renewable Energy Sources by Distribution Licensees) Regulations, 2006, as amended in 2008 and in 2010. (hereinafter referred to as RE Regulations 2006)
 - (ii) KSERC (Power Procurement from Renewable Energy Sources by Distribution Licensees) Regulations, 2013. (hereinafter referred to as RE Regulations 2013)
 - (iii) KSERC (Renewable Purchase Obligation and Its Compliance) Regulations, 2010 (hereinafter referred to as RPO Regulations, 2010)
 - (iv) KSERC (Renewable Energy) Regulations, 2015 (hereinafter referred to as RE Regulations 2015)
6. The regulations mentioned as items (i) and (ii) above specify the methodology and norms for the fixation of generic preferential tariff for the electricity generated from renewable sources. The Commission has also been determining from time to time, the preferential tariff for the renewable energy from various sources. The regulations mentioned at item (iii) specify the RPO of the obligated entities namely, the distribution licensees, the captive consumers and the open access consumers. The regulation 3 and the regulation 4 of the RPO Regulations, 2010 are quoted hereunder,-

“3. Renewable Purchase Obligation. - (1) Every obligated entity shall purchase not less than 3% of its consumption of energy from renewable energy sources under the Renewable Purchase Obligation during the years from 2010 with annual increase of 10% of 3% per year upto a maximum RPO of 10%:

Provided that 0.25% of the consumption of energy shall be procured from generation based on solar as renewable energy source only;

Provided further, such obligation to purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by the concerned obligated entity;

Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees and consented to by the Commission shall

continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified herein above.

4. Certificates under the regulations of the Central Commission.-(1) *Subject to the terms and conditions in these regulations the Certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issue of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources;*

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only, and the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non solar certificates.

(2) Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issue of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Commission in regard to the procurement of the certificates for fulfillment of the Renewable Purchase Obligation under these regulations.

(3) The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause (1) of this Regulation shall be deposited by the obligated entities to the Commission in accordance with the detailed procedure issued by the Central Agency. “

7. The Commission has also issued KSERC (Connectivity and Intra-State Open Access) Regulations, 2013, for providing connectivity and KSERC (Grid Interactive Distributed Solar Energy Systems) Regulations, 2014, for providing net metering facility. The Commission has also introduced generation based incentives (GBI) for the electricity generated by the off grid solar systems.
8. Undoubtedly KSERC has jurisdiction only over such activities in the power sector within its functional jurisdiction and within its territorial jurisdiction namely, the State of Kerala. Therefore, the RPO mentioned in the regulation 3 and the REC mentioned in the regulation 4 above as well as the duty of Kerala State Electricity Regulatory Commission (KSERC) to promote

renewable energy under clause (e) of sub-section (1) of Section 86 of the Electricity Act, 2003, can only be with regard to the renewable energy and obligated entities in Kerala. KSERC can specify regulations for giving connectivity or for fixing preferential tariff only for the renewable energy generators in the State. Similarly the RPO fixed by KSERC as per the RPO Regulations, 2010, is applicable only to the obligated entities namely the distribution licensees, captive consumers and the open access consumers in Kerala, as defined in clause (h) of regulation 2 of the RPO Regulations, 2010. Further the renewable energy sources as defined in clause (k) of regulation 2 of the RPO Regulations, 2010, can only be those in Kerala. In view of the above statutory provisions, it can easily be found that KSERC can insist only on the distribution licensees, the captive consumers and open access consumers to purchase renewable energy from the renewable energy sources within Kerala at the preferential tariff fixed by the Commission for meeting their RPO.

9. The petitioners namely, M/s Indsil Hydro Power and Manganes Ltd. and Sree Sakthi Paper Mills Ltd are captive consumers, which consume the renewable energy generated by them. As per the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as REC Regulations, 2010) the petitioners are eligible to get REC for the electricity generated by them from renewable energy sources. Accordingly the petitioners have been granted RECs. It is stated by the petitioner in OP No. 1/2016 that he has in his possession 93471 RECs. It is stated by the petitioner in OP No. 2/2016 that he has in his possession 13131 RECs. The petitioners have also expressed their willingness to sell their RECs at the floor price to KSEB Ltd. The REC is a market based instrument evolved by the Central Commission as per the REC Regulations, 2010, to promote development of renewable energy to the maximum extent in the renewable energy rich States and to facilitate compliance of RPO by the obligated entities in renewable energy deficient States. The CERC, while explaining the statement of objects and reasons of the REC Regulations, 2010, has clarified that the REC has been introduced to facilitate mitigation of the imbalances in availability of renewable energy sources in various states across the country. In the normal course, the electricity from renewable sources is comparatively costlier when compared to the cost of electricity from conventional sources. Therefore, the obligated entities would be reluctant to purchase costlier electricity from renewable sources for the fear of increase in their cost of power purchase and the tariff applicable to the consumers. That is why mandatory RPO has been introduced by the SERCs to insist on the obligated entities to purchase renewable energy. Further, the obligated entities who

have to comply with their mandatory RPO, can be legitimately reluctant to purchase electricity from renewable sources above their mandatory RPO. If the obligated entities confine the purchase of renewable energy to the quantities just sufficient to meet their RPOs, the renewable energy generators in the states with huge potentials for the development of renewable energy will not have takers for the electricity generated by them from the renewable sources. The reluctance of the RPO compliant obligated entities in the renewable energy rich states to purchase renewable energy beyond their RPO, will ultimately discourage the development of renewable energy in such states. The obligated entities in the renewable energy deficient states can take a stand to the effect that renewable energy sufficient to meet their RPO is not available for purchase in such states. It is to break this likely stalemate in the development of renewable energy in the country, the Hon'ble CERC has introduced REC mechanism by which the cost of electricity from renewable energy sources can be divided into two components namely, the cost equivalent to the cost of generation of electricity from conventional sources and the cost of environmental benefits. By this process the renewable energy generators in the states which are rich in renewable energy sources can generate as much electricity as possible from renewable sources and sell such electricity at the rates applicable to electricity from conventional sources to the distribution licensees in the state, without adversely affecting the exchequer of such licensees. Such renewable energy generators can get RECs equivalent to the cost of environmental benefits and such RECs can be sold to those obligated entities which could not comply with their RPO for want of electricity from renewable sources in their respective renewable energy deficient states.

10. Renewable Energy Certificate (REC) is a creation of REC Regulations, 2010 and it has been specified that it is a valid instrument for the discharge of RPO of the obligated entities. The statutory provision in the Electricity Act, 2003, do not explicitly provide for REC mechanism, though they provide for the fixation of RPO, the fixation of preferential tariff, the connectivity to grid and for the development of renewable energy. REC is only an alternative mechanism for the cost recovery of renewable energy by facilitating division of the cost of renewable energy into the cost of electricity equivalent to conventional energy and the cost of environmental attributes. The renewable energy generators can sell their renewable energy to the local distribution licensees at a cost equivalent to that of electricity from conventional sources and sell REC to the obligated entities who could not comply with their RPO.
11. It has been stated by KSEB Ltd in its written statement of defence that the CERC is contemplating on withdrawal of RECs to captive generators and therefore allowing the prayer of the petitioners will result in undue enrichment

to the captive generators. KSEB Ltd has also submitted that the petitions should be dismissed since it is inconsistent with the scheme of REC. KSEB Ltd has also pointed out that the Commission had, in its order dated 23.04.2014 in OP No. 31/2013, rejected a similar request of M/s Sree Sakthi Paper Mills Ltd. and that the said order of the Commission has not been challenged by the petitioner. The facts and circumstances leading to granting REC to captive generators have been explained by the Hon'ble CERC while issuing REC Regulations, 2010. It can be seen that the captive power producers (CPPs) generating electricity from renewable energy sources and consuming it, are also eligible for the award of REC as per the REC Regulations, 2010. The Hon'ble CERC has, vide its order dated 30.12.2014, clarified on the REC multiplier for captive generating plant. The Hon'ble CERC has not so far excluded the captive generators from the REC mechanism. Therefore, the validity of RECs already issued to the petitioners in accordance with the provisions of the REC Regulations, 2010 cannot be challenged on the ground that the Hon'ble CERC is contemplating on excluding captive generators from the REC mechanism.

12. An examination of the statutory provisions and the regulations issued by SERCs will show that, all necessary legal frameworks are in place to encourage development of renewable energy in our nation. Mandatory non-discriminatory open access is available to all renewable energy generators. Preferential tariff have been fixed by SERCs and CERC for various sources of renewable energy such as small hydro, wind, solar, biomass etc. RPO has been determined by SERCs for the obligated entities within their jurisdictions and control. REC mechanism has been introduced by Hon'ble CERC in order to facilitate the optimum development of renewable energy across the country. Floor price and forbearance price have also been fixed for the transaction of RECs through power exchanges. However the RPO and REC mechanisms have not worked well. The success of RPO mechanism is in insistence on the obligated entities by the SERCs and the success of REC mechanism is in proper and timely disposal of RECs through the power exchanges which are designated with the duty of disposal of RECs. It has been reported that 17 million unsold RECs worth thousands of crore of rupees are available with power exchange without purchasers.
13. In the recent Paris Conference on Climate Change all the participating nations and International Organisations like UNO have resolved to limit the greenhouse gas emission to such an extent that the global warming will be below two degree centigrade over the pre-industrial global temperature. All the nations have been given option to declare their voluntary contribution towards this common cause. Our nation has committed before the international community of nations that India will increase generation of power from renewable energy sources to 1.7

lakh MW by 2022. Out of this, 1 lakh MW would be from solar sources. Out of this 1 lakh MW solar power 40000 MW has been targeted from solar roof top plants. The roof top targets for Kerala by 2022 is 800 MW.

14. In this regard it is most pertinent to invite the attention of all the obligated entities including KSEB Ltd, to the notice published by Ministry of New and Renewable Energy (MNRE) Government of India in the leading national dailies, regarding the compliance of RPO and the accumulation of unsold RECs. In the said notice published in The Hindu dated 22.03.2016, Government of India has requested all the obligated entities to choose the green path for a sustainable tomorrow and to be RPO compliant and be a proud contributor to a green future. The other relevant portions of the said notice is reproduced hereunder,-

“To all Distribution Companies, Captive Power Consumers and
Open Access Consumers in India

- *All Obligated Entities, as notified by respective State / Joint Electricity Regulatory Commission, are mandated to fulfil their respective Renewable Purchase Obligation (RPO) for each Financial Year by:*
 - *Utilizing Renewable Power from Own Generation / Third Party.*
 - *Buying Renewable Energy Certificates (RECs)*
- *All obligated entities must ensure necessary action for RPO compliance of FY 15-16 & previous FYs (if required) by 31st March 2016.*
- *In case you have not purchased enough renewable energy or RECs, you may do so by purchasing RECs through energy exchanges. Last trade session of the FY 2015-16 is scheduled on 30.03.2016.*
- *Non-Compliance will make it liable for penalty and actions under Sec. 142 of Electricity Act, 2003, and any penalty and actions as notified by respective SERC/JERC.*
- *Hon’ble Supreme Court in the case of Hindustan Zinc Ltd Vs Rajasthan Electricity Regulatory Commission (Civil Appeal No. 4417 of 2015) and Appellate Tribunal for Electricity in the case of Indian Wind Power Association Vs. Gujarat Electricity Regulatory Commission & others (Appeal No.258 of 2013) and Indian Wind Power Association & others Vs. Gujarat Electricity Regulatory Commission & others (Appeal No. 21 of 2014 & IA-28 of 2014) and in numerous SERC judgments, RPO compliance has been mandated.*
- *Unsold REC till date 17 Million.*
- *For more information refer to respective SERC/RPO Regulation.”*

The above notice is more than sufficient to indicate the policy of Government of India and the importance given to the development of renewable energy and compliance of RPO. Even without any compulsion from the Commission the obligated entities should volunteer to fulfil their responsibility and perform their duties for a green sustainable future.

15. Government of India, CERC and SERCs are considering various options to break the stalemate and improve the situation. So far no tangible solution has been worked out.

In this regard, the following facts have to be considered,-

- (1) Renewable energy is costlier and therefore every distribution licensee will be reluctant to purchase renewable energy for the fear that such purchase of renewable energy will increase its average cost of power purchase and consequently the tariff applicable to consumers.
- (2) All the consumers resist increase in tariff and therefore the state government may also not been favourable to tariff increase.
- (3) In spite of the above facts, renewable energy has to be developed, considering the facts that,-
 - (a) Fossil fuels generate more GHG resulting in increase of global warming
 - (b) Fossil fuel are exhaustible.
 - (c) Nuclear fuel has high risk factor
 - (d) Such other factors
- (4) SERCs have, as per Regulations, introduced mandatory RPO, for the obligated entities namely, the distribution licensees, the captive consumers and the open access consumers.
- (5) Statutory provisions in the Electricity Act, 2003, stipulates only for specifying RPO and for development of renewable energy and the SERCs have been given the duties and functions in this regard.
- (6) SERCs are the authorities to implement RPO and monitor RPO of the obligated entities within their jurisdiction.
- (7) REC is a regulatory arrangement introduced by the Hon'ble CERC, for the development of renewable energy by facilitating sale of electricity and sale of environmental benefit components separately. RECs have to be traded only through the power exchanges based on first-in first-out principle.
- (8) The obligated entities entertain a general feeling to the effect that, while purchasing REC, they do not get any energy and that they have to pay for the RECs granted to the renewable energy generators unknown to them. KSEB Ltd has expressed such feeling in their written statement of defence. KSEB Ltd has also pointed out that the State Commission lacks jurisdiction to consider the petition as the reliefs sought for by the petitioners are related

to the REC mechanism which is a national level mechanism, the terms and conditions of which are governed by REC Regulations issued by the Hon'ble CERC.

- (9) SERCs may also be inclined to adopt similar view for the following reasons,-
- (i) SERC has jurisdiction only over the obligated entities and renewable energy generators in the State.
 - (ii) SERC has the duty and responsibility to develop renewable energy in the respective State where it has jurisdiction.
 - (iii) RPO and preferential tariff as determined by SERC are applicable only for the obligated entities and renewable energy generators in the State.
 - (iv) As per the present scheme of law, the SERC can insist on the obligated entities under its jurisdiction to purchase renewable energy from the renewable energy generators under its jurisdiction, at the preferential tariff fixed by the SERC.
 - (v) As per the provisions of REC Regulations, 2010, the RECs can be transacted only through power exchanges and the power exchange shall do the transaction as first-in, first-out principle.
 - (vi) Therefore, any direction given by SERC insisting on purchase of REC by the obligated entities under its control need not necessarily benefit the renewable energy generators which the SERC is bound to support.
16. In view of the above facts, the undersigned is of the considered view that, the accumulation of RECs in the power exchange can be reduced, if the obligated entities are directed by the Hon'ble CERC to purchase RECs preferentially from the renewable energy generators in the respective states or if the SERCs are authorized by the Hon'ble CERC to issue directions to the obligated entities within their jurisdiction to purchase RECs from the renewable energy generators within their jurisdiction. The balance RECs can be transacted through power exchanges as directed by the Hon'ble CERC.
17. As pointed out by the learned Members, in their majority order, it would not be appropriate for the Commission to give such a direction to KSEB Ltd as requested for by the petitioners. Regulation 8 of the REC Regulations, 2010, states as follows,-

“8. Dealing in the certificates.- (1) Unless otherwise specifically permitted by the Commission by order, the Certificates shall be dealt only through the Power Exchange and not in any other manner.

(2) The Certificate issued to eligible entity by the Central Agency may be placed for dealing in any of the Power Exchanges as the Certificate holder may consider appropriate, and such Certificate

shall be available for dealing in accordance with the rules and byelaws of such Power Exchange:

Provided that the Power Exchange shall obtain prior approval of the Commission on the rules and byelaws including the mechanism for discovery of price of the Certificates in the Power Exchange”.

18. From the above regulation it can be seen that the Hon'ble CERC has the power to issue orders on the prayers of the petitioners. The petitioners have expressed their willingness to sell the RECs to KSEB Ltd at floor price. The contention that the petitions shall be rejected on the ground that Hon'ble CERC is contemplating on excluding captive power generators from REC mechanism, is not valid as far as RECs which have already been granted to the petitioners. Therefore, the undersigned is of the view that it would be more appropriate for the petitioners to approach the Hon'ble CERC. The undersigned anticipates that the Hon'ble CERC will consider entire facts and circumstances as well as the relevant statutory provisions and will issue appropriate orders conducive to the development of renewable energy in the states and in the nation as a whole.

Order

The petitions are disposed of with direction to the petitioners to submit the entire facts including the views expressed above, before the Hon'ble CERC, if they so desire.

Dated this 29th day of March, 2016.

Sd/-

T.M. Manoharan,
Chairman

Approved for issue

Santhosh Kumar.K.B
Secretary