

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

HERC/Petition No. 60 of 2023

Date of Hearing : 13.03.2024
Date of Order : 20.03.2024

In the Matter of

Petition seeking removal of certain difficulties that have arisen in implementation of the Haryana Electricity Regulatory Commission Tariff Order dated 21.03.2022 in Case No. HERC/Petition No. 52 of 2021 and to reassess/redetermine the Fuel cost.

Petitioner

M/s. Gemco Energy Limited

Respondents

1. Haryana Power Purchase Centre, Panchkula (HPPC)
2. HAREDA

Present on behalf of the Petitioner

1. Shri Pulkit Sachdeva, Advocate for M/s. Gemco Energy Limited

Present on behalf of the Respondents

1. Ms. Sonia Madan, Advocate on behalf of HPPC
2. Shri Gaurav Gupta, Xen, HPPC

Quorum

Shri Nand Lal Sharma
Shri Naresh Sardana
Shri Mukesh Garg

Chairman
Member
Member

ORDER

Brief Background of the case

1. M/s. Gemco Energy Limited (GEMCO) has filed the present petition seeking removal of difficulties arising out of the Commission's generic tariff order dated 21.03.2022 regarding fuel cost and fuel mix and to reassess/redetermine the fuel cost w.e.f. 21.03.2022.
2. **Petitioner's submissions:-**
 - 2.1 That the Commission, in its orders dated 27.01.2021 (HERC/PRO-50 of 2020 and HERC/PRO-51 of 2020, in the matters of M/s GEMCO and M/s Starwire) and 03.03.2021 (HERC/PRO-47 of 2020, in the matter of M/s Sri Jyoti), decided as under:-
"The Commission is in the process of issuing RE Regulations, for the control period from FY 2021-22 to FY 2024-25. Accordingly, the tariff shall be charged by the Petitioner, for the energy supplied, during the control period from FY 2021-22 to FY 2024-25, in accordance with the provisions contained in these Regulations including dispensation on 'fuel cost' for the projects already commissioned prior to the FY 2021-

22. Till then the fuel cost shall be frozen at the FY 2020-21 levels as per HERC Order dated 9.10.2015 for the projects commissioned in the FY 2013-14. It is added that, hence forth, the Commission shall determine ‘fuel cost’ on an annual basis for the RE Projects set up / to be set up in Haryana so as to ensure that fuel cost remains aligned to the prevailing market conditions.”

- 2.2 That the regulations 36 (3) of the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 {“HERC RE Regulations, 2021”}, provides as under:-

“36. Fuel Mix. –

.....

....

(3) Use of Fossil Fuel shall not be permitted. However, at least 30% of the fuel requirement shall be met from Paddy Straw by all biomass/non- fossil based cogeneration plants.”

- 2.3 That on 21.03.2022, the Hon’ble Commission issued tariff order in Case No. HERC/Petition No. 52 of 2021 determining fuel cost for renewable energy projects set up / to be set up in Haryana for the FY 2021-22 and FY 2022-23 on the basis of parameters, except fuel cost, provided in the HERC RE Regulations, 2021. At paragraph 10 of the said order, the Commission provided fuel cost of biomass on the basis of weighted average cost of biomass and paddy straw mix in the ratio of 70:30, as Rs. 3313.94/MT (Rs. $0.7 \times 3400 + 0.3 \times 3113.14$). The Commission at para 10 of the order stated as under:-

10. In order to assist the Commission in assessing the quantum and delivered cost of paddy stubble and bagasse at the power generator’s site, in Haryana, a work order no. 502/HERC dated 18.05.2021 was issued to the MD University, Rohtak. MDU, Rohtak had submitted their final report, vide letter no. DAA-1668 dated 10.11.2021. On the basis of the report of MDU, Rohtak, the Commission proposed the cost of paddy straw as Rs. 3113.14/MT (square bale upto 25 KM) and cost of bagasse as Rs. 2,000/MT, for the FY 2021-22 and FY 2022-23 (without any escalation). Accordingly, the cost of biomass fuel determined on the basis of weighted average cost of biomass and paddy straw mix in the ratio of 70:30, works out to Rs. 3313.94/MT (Rs. $0.7 \times 3400 + 0.3 \times 3113.14$). ”

- 2.4 That, in view of the order dated 21.03.2022 and the HERC RE Regulations, 2021, wherein, the use of paddy straw as 30% fuel was mandated upon the biomass based

renewable energy power plants, the petitioner was constrained to adopt to the new regulations, which created a lot of practical and feasibility difficulties for the petitioner to operate the power plant according to the updated Regulations.

- 2.5 That the petitioner approached this Hon'ble Commission regarding the aforementioned difficulties, by submitting a detailed representation dated 08.05.2023, and requested to arrive at the fuel cost for the year 2023-24, after considering the difficulties being faced by the petitioner. However, since this Hon'ble Commission did not provide any response to the representation dated 08.05.2023, the petitioner is constrained to approach this Hon'ble Commission by way of the present petition.
- 2.6 That in view of the above, the present petition has been filed seeking necessary directions from this Hon'ble Commission for removing the difficulties that have arisen in implementation of the Haryana Electricity Regulatory Commission Tariff Order dated 21.03.2022 in Case No. HERC/Petition No. 52 of 2021 vis-a-vis:-
- a. Fuel cost
 - b. Fuel Mix (use of 30% paddy straw/stubble)

The details are as under: -

2.6.1 Fuel Cost-

That in the tariff order dated 21.03.2022, the Hon'ble HERC has stated that the report submitted by MDU, Rohtak recommends for cost of Paddy straw as Rs. 3113.14/MT, provided the same is procured in square bales and transported from within a distance of 25 kms of power plant's vicinity. However, fact is that paddy straw is unavailable within 25 kms from the petitioner's power plant and in most cases, transported from around 150 kms away, that too in square bale form. Hence, if at all, HERC ought to have provided the cost of paddy straw as Rs. 3588.73 as also recommended by the same Report submitted by MDU, Rohtak, with additional transportation cost beyond 25 kms distance.

Further, as per the letter dated 01.12.2022 of Hafed Sugar Mill Assandh (a Govt. mill), the price of bagasse for crushing season 2022-23 is fixed at Rs. 441/- per quintal plus taxes and the loading/ unloading and transportation charges are extra. On the other hand, the Ld. HERC has assumed the cost of bagasse as Rs. 2,000/MT for FY 2022-23 (without any escalation), which is completely contrary to the Government's own mill rates for FY 2022-23. The fuel costs norms may please be aligned by the Hon'ble Commission, atleast with the State Government's own mill approved rates.

2.6.2 Fuel Mix

It has been submitted that the Commission has provided for compulsory use of 30% paddy straw for all the biomass power plants in the State. This has forced the plants to

operate with fuel other than what they have been designed for. It has been submitted that additional capital cost of approx. Rs 900-1000 lacs is required to be able to continuously utilize 30% paddy straw in petitioner's power plant. The fuel feeding system is required to be altered, new equipment for handling of paddy straw is necessitated, ash handling system needs to be modified, the superheater coils require to be changed as the melting point temperature of paddy straw ash is much lower as compared to other biomass fuels available within the vicinity of petitioner's plant and many other design changes are deemed necessary in order to comply with the compulsory use of 30% paddy straw fuel mix. Capital cost is required to be incurred on land, chipper machine, weigh bridges etc. for fuel centres to procure and process paddy straw. Further, the plant would have to be shut for approximately 60 – 90 days for the necessary modifications to be implemented. The additional capital cost incurred for making these changes ought to be allowed by the Commission as a pass through. Alternatively, in the facts and circumstances of present case, the Commission may consider exercising its inherent jurisdiction under Regulations 65, 66 and 67 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 read with Regulations 76 and 77 of the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 and pass necessary order(s)/ direction(s) reducing/ relaxing the compulsory use of paddy straw to 5-6% which is sustainable for the machinery and Plant.

2.7 That for the reason that the quantum of biomass based power generation procured by HPPC is almost 1% of their total power requirement and biomass plants are important in curbing biomass burning in farms and helps in reducing pollution, the Hon'ble Commission may pass necessary directions to remove the difficulties so that the biomass plants may survive and continue to supply uninterrupted green power in the State of Haryana.

2.8 Following Prayer has been made:-

- (a) Pass necessary order(s)/ directions(s) for removing the difficulties in respect of fuel cost and fuel mix norms specified by the Hon'ble HERC;
- (b) Reassess/redetermine the fuel cost considering the various factors indicated in the petition and issue a supplementary tariff order in respect of petitioner with a direction to release the revised tariff to the petitioner from the date of the order till the date of implementation.
- (c) Pass any other order/directions as this Hon'ble Commission may deem fit, in the facts and circumstances of the present matter, in the interest of justice, equity and good conscience.

3. **Respondent's (HPPC) reply: -**

The respondent (HPPC) who, on behalf of the two Distribution licensees, procures power from the petitioner herein has submitted as under: -

- 3.1 That the scope and realm of application of the 'powers to remove difficulty' is very limited. Reliance in this regard is placed on judgment in **Madera Upendra Sinai V. Union of India [(1975) 3 SCC 765]** wherein the Hon'ble Apex Court held as under:
- "Now let us turn to Clause (7) of the Regulation. It will be seen that the power given by it is not uncontrolled or unfettered. It is strictly circumscribed, and its use is conditioned and restricted. The existence or arising of a "difficulty" is the sine qua non for the exercise of the power. If this condition precedent is not satisfied as an objective fact, the power under this Clause cannot, be invoked at all. **Again, the "difficulty" contemplated by the Clause must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising aliunde, or an extraneous difficulty. Further, the Central Government can exercise the power under the Clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further.** It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act."*

(Emphasis Supplied)

Reliance is also placed on the judgment of the Appellate Tribunal in **Ratnagiri Gas and Power Private Ltd. Uttar Pradesh Vs. Central Electricity Regulatory Commission & Another [2011 ELR (APTEL) 0532]**, wherein it has been observed that:

*"10.3. In our opinion, **power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations.** Thus, the exercising of power to remove difficulties does not arise in the present case"*

(Emphasis Supplied)

- 3.2 That it is relevant here to refer to the judgment passed by Hon'ble APTEL in **Madhya Pradesh Power Generation Company Ltd. v. Madhya Pradesh Electricity Regulatory Commission [Appeal No. 170 of 2010, Decided on 6.05.2011]** wherein the Appellant- Generating Company had filed a petition before the State Commission for relaxation of the operating norms of tariff determination as the norms were

impossible to be met with on the ground that the generating stations were old. The State Commission rejected the prayer. Thereafter, an appeal was filed wherein an argument was raised by the Appellant that neither any challenge to the Regulations is being made, nor any amendment is being sought, but the Appellant was only asking for a direction to modify the norms in exercise of the Commission's power to relax or to remove difficulties or to apply inherent power. This submission of the Appellant was rejected. The Hon'ble APTEL observed that relaxation of norms which was prayed for is possible only when the notified regulation is again notified by bringing about an amendment thereof. The Hon'ble APTEL held that if it gives direction to the State Commission to amend the regulations, it would be required to observe that the norms set out in the regulations are unjust or improper or illegal and hence amendment is necessary. That would mean it would have to undertake judicial review of the regulations which it cannot do.

Similarly, in the present case, a bare perusal of the 'Grounds' of the clearly show that the Petitioner has tried to impugn the correctness of the Regulations/ Tariff Order. Applying the analogy of the aforesaid judgment, in case the norms are relaxed for the Petitioner in view of the grounds mentioned, such an order would entail a finding that the Regulations/Tariff Order is improper for application to the case of the Petitioner. Thus, the present case of the Petitioner is liable to dismissed as untenable in the present form.

- 3.3 That the present petition is nothing but an 'review petition' in disguise. The petitioner is presenting the issues already agitated and settled by the Hon'ble Commission, by merely changing the nomenclature of the petition and by terming it as a petition seeking removal of the difficulty. Throughout the present petition, the Petitioner has only put forth justifications against the finding of the Hon'ble Commission. As such, the present petition is liable to be dismissed on the sole ground that no relief can be granted to the Petitioner under the Regulations relating to the removal of difficulty/relaxation, since the Petitioner has failed to show any difficulty in effecting the Regulations and when evidently the Petitioner is in essence seeking review of the order dated 21.03.2022.
- 3.4 That the Tariff Order was passed way back on 21.03.2022. Before the passing of the Tariff Order, the Hon'ble Commission had duly invited the comments/suggestions/objections from the stakeholders on the fuel cost. A public notice was hosted on the website of the Commission stating the last date of submission of comments/suggestions/objections as 31st December, 2021. It is submitted that the Petitioner herein neither submitted any comments/ suggestions/ objection nor challenged the subsequent order dated 21.03.2022. No appeal or review was preferred

by the Petitioner against the said order. Thus, the Petitioner cannot be permitted to re-open the issue in a subsequent proceeding which has been filed belatedly.

- 3.5 That the petitioner has tried to take the shelter of the inherent power of the Hon'ble Commission, however, no benefit can be granted to the Petitioner for reviewing the Tariff Order. Reliance is placed on the decision in **Vareed Jacob v. Sosamma Geevarghese [2004 (6) SCC 378]** wherein the Hon'ble Apex Court held that where a situation is governed by a specific provision of Rules (i.e. Regulations relating to 'Review' of the order in the case at hand), the inherent powers of the Court under section 151 are not to be invoked. A similar view was taken by the Hon'ble Apex Court in **Damodaran Pillai Vs. South Indian Bank Ltd. [2005 AIR (SC) 3460]** wherein it has been held that:

"13. It is also trite that the civil court in absence of any express power cannot condone the delay. For the purpose of condonation of delay in absence of applicability of the provisions of Section 5 of the Limitation Act, the court cannot invoke its inherent power.

14. It is well-settled that when a power is to be exercised by a civil court under an express provision, the inherent power cannot be taken recourse to."

(Emphasis Supplied)

- 3.6 That under the garb of the present petition, the petitioner is also seeking to challenge the Regulations notified by this Hon'ble Commission. It is a settled law that the power to frame/ amend regulations is a legislative power. The exercise of such legislative power to frame/ amend Regulations cannot be a matter of judicial hearing as in the case of other petitions.
- 3.7 That throughout the petition, the petitioner has made bald, self-serving averments without a single document in support of such statements. For instance, the Petitioner has stated that capital cost of approx. 800 lacs is required to be continuously utilize 30% paddy straw without any evidence on record to prove the same. In support of the alleged difficulties, the only document sought to be placed on record is letter of HAFED dated 01.12.2022 (Annexure P-4A), which is not even legible. Regardless of same, the said letter, by no means establishes the fuel cost. The Petitioner ought to have produced on record the audited financial statements along with plant generation sheets, in absence of which, the contentions of the petitioner are evidently far-fetched and not worthy of any consideration.

4. **Petitioner's (M/s. GEMCO) rejoinder: -**

- 4.1 That the respondent no. 1 has tried to mislead this Hon'ble Commission by mis-citing the procedural and technical aspects, terming the present petition as a "Review Petition in disguise".

4.2 That the petitioner has neither challenged the regulations nor its validity, and is neither going to the extent of seeking judicial review of the regulations. The petitioner has tried to make out a very clear and concise case, wherein the petitioner has cited all the practical and ground level difficulties which are being faced by the petitioner for “giving effect to the” regulations laid down by this Hon’ble Commission regarding the mandatory use of Paddy Straw by the Biomass based Power Plants, as well regarding the Fuel cost, which had been determined by this Hon’ble Commission in its order dated 21.03.2022.

4.3 That the primary challenge raised in the present petition is that the fuel cost of the Paddy Straw as determined by this Hon’ble Commission is not as per the prevalent market conditions. This submission is substantiated by the following workings:-

A. Scenario 1: Cost of Paddy Straw when paddy bales are shredded by the Petitioner at Plant site

Cost of paddy straw bales:	Rs. 2,700/- per MT
Transportation: (Fatehabad to Bhiwani approx. 120 kms)	Rs. 1,100/- per MT
Shredding cost:	Rs. 980/- per MT

Landing Cost of Paddy Straw (shredded): Rs. 4,780/- per MT

B. Scenario 2: Cost of Paddy Straw when paddy is used as it is without shredding:

Cost of paddy straw bales:	Rs. 2,700/- per MT
Transportation: (Fatehabad to Bhiwani approx. 120 kms)	Rs. 1,100/- per MT

Total Landing Cost of Paddy Straw (Bales): Rs. 3,800/- per MT. However in this scenario, major modification in the Boiler costing to the tune of 8.00 crores would be required & a shut down time of 3-4 months.

C. Cost of Paddy Straw considered by Hon’ble HERC as per the study of MDU, Rohtak

Cost of Paddy Straw bales (square bales of paddy straw):	
Rs. 3,113/- per MT	

4.4 That it is clearly evident from the above workings the fuel cost of paddy straw determined by this Hon’ble Commission is lesser than the landing cost of paddy straw (bales or shredded), and as such the petitioner is suffering from losses because of the fuel cost prevalent in the market vis-à-vis the fuel cost determined by this Hon’ble Commission in its order dated 21.03.2022.

4.5 That the above workings are based on the paddy straw bales which have been actually procured by the petitioner.

4.6 That in case the petitioner is to use complete paddy straw bales as it is, then the petitioner would have to make major modifications to the power plant to accommodate the plant for use of Paddy Straw as Fuel, which has now been made mandatory in terms of Regulation 36 of the HERC RE Regulations, 2021. For making the

modifications to the power plant, the petitioner shall have to expend a sum of Rs. 8 Crores (approx.) towards capital expenditure, for which depreciation shall be accounted for in the overall tariff price by the Respondent no. 1.

- 4.7 That in case the petitioner succeeds in the present petition, the petitioner shall approach the Respondent no. 1 furnishing the project report pertaining to additional capital cost for making the paddy straw bales usable as a Fuel.
- 4.8 That the Respondent no. 1, in its reply has also taken an objection regarding the belated stage of filing of the present petition, since the Order was passed on 21.03.2022 and regulations were framed on 30.04.2021. In this regard, it is submitted that the petitioner had been trying to procure the Paddy Straw and to make use of the same as fuel, which is evident from the documents annexed with the present rejoinder. It is also further submitted that the petitioner had approached this Hon'ble Commission vide letter dated 08.05.2023 and had also written e-mails to this Hon'ble Commission, which are already on record of this petition. Therefore, the petitioner was making all the sincere efforts for implementation of the Regulation 36 of RE Regulations, 2021. However, when the same was not practically feasible, the petitioner was constrained to approach this Hon'ble Commission by way of the present petition.

Proceedings in the Case

5. In order to afford an opportunity to the parties present their case and respective arguments on the merits of the case for removal of difficulty, the Commission in order to take the process forward, considered it appropriate to hear the matter.

Commission's Order

6. The petition preferred by M/s. Gemco was called for hearing on maintainability on 13.03.2024. The Commission heard the arguments of the parties at length as well as perused the written submissions and documents placed on record by them.
7. The Commission observes that the present petition has been filed invoking the powers of the Commission to remove difficulties arising in implementation of the generic tariff order dated 21.03.2022 vis-à-vis 'fuel cost' and 'fuel mix'. Fuel cost in the context of cost of procurement and use of biomass mix for the purpose of power generation as determined and made applicable by the Commission. While 'fuel mix' in the context that the biomass/cogeneration power generators who are statutorily bound to use paddy straw/stubble to the extent of a minimum 30% on an annual basis for power generation.
8. It was averred by the respondent HPPC that the petitioner has failed to show any difficulty in effecting the Regulations in vogue and the petitioner is in essence seeking

review of the order dated 21.03.2022. Further, the petitioner is also seeking to challenge the Regulations notified by this Commission. Whereas, it is a settled law that the power to frame/ amend regulations is a legislative power. The exercise of such legislative power to frame/ amend Regulations cannot be a matter of judicial hearing.

9. The Commission has perused the documents filed by the petitioner. It is observed that the petitioner has attached documents in support of its averments that it is incurring heavy losses on account of procurement of paddy straw at higher rate than the rate considered by the Commission in its determination of levelized tariff for the FY 2022-23. The Commission has also observed that the provisional stock details and fuel consumption statements filed by the petitioner reveals that the petitioner is in fact not procuring paddy straw/stubble and is mainly procuring mandi waste. As such, the petitioner could not have faced any difficulty. Further, the petitioner in its fuel consumption statement for the period from August to November, 2023, has shown the procurement of parali cutting of 3165 MT. However, the consumption of the same is only 24 MT. The Commission fails to appreciate that any prudent business practice would warrant the purchase of parali cutting at exorbitant rate as averred by the petitioner and then not consuming the same. Further, the petitioner has failed to produce bills in support of a claim of higher fuel cost, citing that the procurement of fuel is being done from an unorganised sector. The petitioner could not offer any explanation for the circumstances which compelled it to procure parali cutting/paddy stubble from far flung area of Fatehabad, instead of procuring the same from its vicinity in Bhiwani itself, which is a paddy sown belt or in the worst case scenario from nearby areas of Rohtak and Hisar.
10. **Merely submitting tabular statements or submitting certain selective bills showing exorbitant cost of purchase of fuel, without corroborating the same with the audited balance sheets and annual bills (fuel purchased during paddy season might have averaged the fuel cost on annual basis), does not make any ground for invoking the powers of the Commission for 'Removal of Difficulties'.**
11. Notwithstanding the above discussions, the Commission has considered it appropriate to peruse the submissions and relief sought by another similarly placed generator (M/s. SWIVPL) in the appeals filed before Hon'ble Punjab and Haryana High Court and Hon'ble Appellate Tribunal for Electricity (APTEL), in order to examine the issues involved and their duplicity, if any. The prayer of M/s. SWIVPL) in the appeal filed before the Hon'ble Punjab and Haryana High Court (CWP No. 10555 of 2022), is reproduced below:-

"In the facts and circumstances mentioned herein above, it is respectfully prayed that:-

- (a) *This Hon'ble Court may kindly be pleased to pass any appropriate writ, order, or direction including a Writ in the nature of Certiorari to quash and set aside the impugned provisions of the HERC RE Regulations, 2021 (Annexure P-1) to the extent stated in para 25 of the Writ Petition;*
- (b) *This Hon'ble Court may kindly be pleased to pass any appropriate Writ, order, or direction including a Writ in the nature of Mandamus to direct the Respondent HERC to adopt the norms of fuel cost as determined by CERC in their entirety, as has also been done in the past for determination of fuel cost for the existing projects;*
- (c) *Alternatively, it is prayed that a writ of mandamus be issued directing the HERC to carry out extensive and independent market-based studies based on actual ground realities, as directed by the APTEL vide its Judgement dated 23.03.2015 in O.P. No. 3 of 2012, after giving all the stakeholders an opportunity of being heard on the report, for determination of the variable cost of existing biomass projects on an annual basis;*
- (d) *It is further prayed that this Hon'ble Court may be pleased to stay the implementation of the Impugned Regulations till the disposal of the present Writ Petition; and*
- (e) *Furthermore, it is prayed that this Hon'ble Court may also be pleased to stay all further steps and proceedings including the proceedings under the tariff order issued by the HERC on 21.03.2022 for determination of fuel cost under the impugned HERC RE Regulations, 2021;*
- (f) *It is further prayed that in the interregnum, this Hon'ble Court may be pleased to direct the HERC to continue the earlier fuel costs determined as prevailing under the HERC RE Regulations, 2015 applicable in the Petitioners case, pending the final decision of this Hon'ble Court; and*
- (g) *Pass such other order(s) and provide such other relief(s) as this Hon'ble Court may deem just and expedient in favor of the Petitioner.*
- (h) *Any other relief or relief(s), which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case, may also be granted.*
- (i) *Service of advance notices upon the Respondent be dispensed with.*
- (j) *Filing of certified/true typed/legible copies of Annexure be dispensed with."*

*Para 25 of the writ petition mentioned in the prayer clause is reproduced hereunder: -
 "The present writ petition is being preferred under Articles 226/227 of the Constitution of India, inter alia, seeking appropriate Writ, order, or direction including a Writ in the nature of Certiorari to quash and set aside -*

- (i) *Impugned proviso to Regulation 9(1) of the impugned HERC RE Regulations, 2021 (Annexure P-1) to the extent that the fuel cost component determined on annual basis under the regulations shall also apply prospectively to the projects commissioned during the previous Control Periods, in the absence of independent State specific study based on current market trends:*

- (ii) *Impugned Regulation 38 of the impugned HERC RE Regulations, 2021 to the extent that it provides an unfair and unrealistic Biomass fuel price during first year of the Control Period as Rs. 3000 /MT with arbitrary escalation at the rate of 2.93% per annum, without any independent State specific study based on current market trends;*
- (iii) *Impugned Regulation 36(3) of the impugned HERC RE Regulations, 2021 relating to Fuel Mix to the extent that it fails to take into account the additional Capital Cost that would be involved for changing the design of the existing plants in order to comply with the revised Fuel Mix and SHR norms as also the additional transportation cost of approx. Rs. 1570/MT;*
- (iv) *Impugned Regulation 34 of the impugned HERC RE Regulations, 2021 to the extent that it provides an arbitrary and unfair SHR of 4200 kcal / kWh (travelling grate with water cooled condenser) for the projects commissioned during the previous Control Periods as it fails to take into account the additional Capital Cost that would be involved for changing the design of the existing plants in order to comply with the revised SHR norms;*
- (v) *Impugned Regulation 37 of the impugned HERC RE Regulations, 2021 to the extent that it provides the arbitrary and unrealistic GCV of 3100 (kcal/kg), without considering the actual GCV of paddy straw which is much lower than the average GCV of 3100 kcal/kg of biomass fuel; inter alia on the following grounds.”*

The Commission has also observed that M/s. SWIVPL, in pursuant to the interim order dated 13.01.2023 passed by Hon'ble APTEL, has amended the petition by withdrawing prayer no. (d) from the prayer clause reproduced above, vide interim order of Hon'ble Punjab and Haryana High Court dated 24.05.2023.

The prayer of M/s. SWIVPL in the statutory appeal filed before the Hon'ble Appellate Tribunal for Electricity (DFR No. 261 of 2022), is reproduced below: -

“21. Relief sought:

The Appellant humbly prays that the Hon'ble Tribunal be pleased to-

- (a) *Quash and aside the Tariff Order dated 21.03.2022 in Case No. HERC/Petition No. 52 of 2021 passed by the Ld. Haryana Commission on account of violation of principles of natural justice;*
- (b) *Direct the HERC to adopt the norms of fuel cost as determined by the Ld. CERC, as has consistently been done in the past by HERC;*

- (c) *Direct the HERC to continue the norms with respect to fuel mix, fuel cost escalation, SHR and GCV as per year of commissioning of the plant; Alternatively, HERC may be directed to carry out extensive market based studies based on actual ground realities for determination of fuel cost, as directed by the Hon'ble APTEL vide its Judgement dated 23.03.2015 in O.P. No. 3 of 2012, and give due opportunity to all the stakeholders to submit their views;*
- (d) *Pass such further order / orders / directions which the Hon'ble Tribunal may deem fit in the interest of justice, equity and go conscience."*

The prayer of the petitioner (M/s. GEMCO) in the present petition, is reproduced below:-

"It is, therefore, most respectfully prayed, that this Hon'ble Commission may be pleased to:

- (a) *Pass necessary order(s)/ directions(s) for removing the difficulties in respect of fuel cost and fuel mix norms specified by the Hon'ble HERC;*
- (b) *Reassess/redetermine the fuel cost considering the various factors indicated in the petition and issue a supplementary tariff order in respect of petitioner with a direction to release the revised tariff to the petitioner from the date of the order till the date of implementation.*
- (c) *Pass any other order/directions as this Hon'ble Commission may deem fit, in the facts and circumstances of the present matter, in the interest of justice, equity and good conscience."*

The prayers made by a similarly placed generator (M/s. SWIVPL) before various authorities and the prayers of M/s. GEMCO before this Commission, is tabulated hereunder: -

Hon'ble Punjab and Haryana High Court	Hon'ble Appellate Tribunal for Electricity	Haryana Electricity Regulatory Commission
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<p>i) To quash and set aside the impugned provisions of the HERC RE Regulations, 2021.</p> <p>ii) To adopt the norms of fuel cost as determined by CERC in their entirety or to carry out extensive and independent market-based studies.</p> <p>iii) To quash and set aside Regulation 36(3) of the impugned HERC RE Regulations, 2021 relating to Fuel Mix.</p> <p>iv) To quash and set aside Regulation 34 of the impugned HERC RE Regulations, 2021 to the extent that it provides an arbitrary and unfair SHR of 4200 kcal / kWh (travelling grate with water cooled condenser).</p> <p>v) To quash and set aside Regulation 37 of the impugned HERC RE Regulations, 2021 to the extent that it provides the arbitrary and unrealistic GCV of 3100 (kcal/kg).</p>	<p>i) To quash and set aside the Tariff Order dated 21.03.2022 in Case No. HERC/Petition No. 52 of 2021 passed by the Ld. Haryana Commission.</p> <p>ii) Direct the HERC to adopt the norms of fuel cost as determined by the Ld. CERC or to carry out extensive market based studies.</p> <p>iii) Direct the HERC to continue the norms with respect to fuel mix, fuel cost escalation, SHR and GCV as per year of commissioning of the plant.</p>	<p>i) Pass necessary orders/directions for removing of the difficulties in respect to the Fuel cost and Fuel Mix Norms.</p> <p>ii) Reassess/redetermine the Fuel cost considering the various factors indicated in the petition and release the revised tariff.</p>
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12. The Commission observes that the similarly placed generator i.e. M/s. SWIVPL has filed an appeal before the Hon'ble APTEL, seeking to set aside the impugned tariff order dated 21.03.2022 and to adopt the norms of fuel cost as determined by the CERC/conduct a study for determination of fuel cost as well as directions against this Commission to continue the norms with respect to fuel mix, fuel cost escalation, SHR and GCV as per the year of commissioning of the plant. M/s. SWIVPL has also filed a Civil Writ Petition before the Hon'ble Punjab and Haryana High Court, wherein the vires of the HERC RE Regulations, 2021 notified on 27.04.2021, have been challenged, which forms the basis of impugned tariff order dated 21.03.2022.

The Commission, after due deliberations, observes that the impugned tariff order dated 21.03.2022 as well as the HERC RE Regulations, 2021 (under which the tariff order in question was passed), have already been challenged in higher Court / Tribunal of competent jurisdiction. In case the issues raised in the present petition is decided in favour of the petitioner, other issues raised in the appeals pending in the Hon'ble APTEL and Hon'ble High Court, challenging the impugned tariff order dated 21.03.2022 as well as the virus of the HERC RE Regulations, 2021, shall still prevail. On the other hand, in case the issues raised in the present petition are decided in favour of the respondent (s), they may be aggrieved, which may lead to the multiplicity of appeals. Needless to add that the relief sought by the petitioner in the present matter, under the garb of 'removal of difficulty', is squarely covered in the writ/appeal pending before the superior courts, as is evident from the table reproduced earlier in this order.

In view of the above, it is concluded that the higher court/Tribunal are already seized of the matter. Lifting the veil, of the present petition for 'removal of difficulty', it is not difficult for anybody to see that in ultimate analysis an effort has been made to dispense with an important part of HERC RE Regulations providing for use of paddy straw/stubble in larger public interest, for which a judicial review is already pending adjudication.

13. In terms of the above discussion, the Commission holds that the present petition is liable to be dismissed on maintainability. Accordingly, the present petition is dismissed.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 20.03.2024.

Date: 20.03.2024
Place: Panchkula

(Mukesh Garg)
Member

(Naresh Sardana)
Member

(Nand Lal Sharma)
Chairman