

19. *In the impugned tariff order dated 05.02.2015, the Commission had considered the capital cost for the existing power plant based on the Detailed Project Report submitted by the respondent no.1 and considered by the MNRE for grant of subsidy. Considering the same and after adding expenditure towards infrastructure, the Commission had determined the generic tariff. Normally, almost all the State Commissions are determining generic tariff for the projects based on Renewable Sources of energy and project specific tariff for the projects based on conventional sources of energy. Therefore, actual expenditure incurred in the projects based on conventional sources of energy subject to prudence check is considered for a specific project and in such cases the tariffs for various projects are different in a particular State even for the same conventional source of energy. This is not the case with generic tariff for the projects based on Renewable Sources of Energy, wherein the tariff is same for a particular source of energy viz. Wind, Solar etc. Further, in its written submission dated 31.12.2018, the respondent no.1 specifically mentioned that "Our approach is for generic tariff determination", which clearly indicates that the respondent no.1 does not want for a project specific tariff. Project specific tariff needs thorough prudent check and various cost data.*

26. *In view of the above facts and circumstances and limitation of the remand case, the issue of revision of capital cost was considered and no new ground was found to revise the Capital Cost in the impugned tariff order dated 05.02.2015. The matter of 'Fuel Mix' is decided in para 23 of this order. Hence, SMP No. 27/2014 stands disposed of."*

**5.** Something similar has prayed out on the second issue of fuel mix.

In the original order dated 05.02.2015, the Commission has recorded its views on the subject as under:

*“Fuel Mix:*

*Commission’s views*

*6.24 The Commission has considered the suggestions from the stakeholders. The Commission also considered the fact that there is no necessity of mixing the vegetables & fruits waste with the Cow Dung to use as a fuel for such types of projects. These projects can very well perform by using only Cow Dung as a fuel.*

*The Commission has, therefore, decided that it would be appropriate to consider the cost of fuel at Rs. 175 per MT for the purpose of determination of tariff. Also, an escalation in fuel price at the rate of 5 % per annum on base price for all the projects may be allowed.”*

**6.** This Tribunal, by judgment dated 18.04.2018, remanding the matter for reconsideration, observed as under:

*“Fuel Mix:*

*Our Findings:*

*9.10 We have gone through the contentions of the Appellant as well as*

*the Respondents and noted that the State Commission has concluded in the Impugned Order that there is no necessity of mixing the fruits and vegetables waste with the cow dung to use as a fuel for such types of projects. These projects can be very well performed by using only cow dung as a fuel. The same views have been reiterated by the State Commission in its Review Order dated 30.04.2015. The reference waste to energy plant is a single/unique plant in the State of Madhya Pradesh where the technology has been brought from Holland and said to have been technically designed to run on 90:10 fuel mix basis. It is further stated by the Appellant that 10% fruits and vegetables waste is required to be mixed with the cow dung because it leads to formation of methane which is essential for running of the plant. While the findings of the*

*Commission in the Impugned Order could be considered as prima facie, the actual facts in this regard can be ascertained only through the Original Equipment Manufacturer (OEM) or by conducting a scientific study.*

*Thus, it ought to have been ascertained by the State Commission based on the above before arriving at a final conclusion which could also be referred for the future biogas plants in the State. It is, therefore, just and appropriate that the matter of the fuel mix is got examined on its technical applicability so as to arrive at a reasonably justified conclusion.*

*9.15 In view of our findings and analysis brought out at supra, out of the four issues, the decision of the State Commission on issues 'B' and 'D' are just and proper. The issues 'A' and 'C' would however, need to be examined afresh taking into account our above findings. Hence, the Appeal is partly allowed to the extent of issues relating to the 'project cost' and 'fuel mix'. On other two issues viz. 'fuel cost' and 'manure cost', we do not feel any necessity to interfere in the findings of the State Commission.*

7. The Commission, by its fresh Order dated 05.02.2019, has recorded thus:

*"Fuel Mix:*

*21. With regard to fuel mix the Commission has noted that as per MNRE Programme Guidelines on Energy from Urban, Industrial and Agricultural Wastes / Residues, the mixing of other wastes of renewable nature, including rice husk, bagasse, sewage, cow dung, other biomass and industrial effluents (excluding distillery effluents) is permissible up to the extent of 10 %; and the said mixing is allowed in " Projects based on any bio waste from Urban waste (cattle dung. Vegetable & fruits market, Slaughter*

house, Poultry waste etc.), Agricultural Waste (paddy straw, agro processing industries residues/ effluents, green grass etc.), Industrial wastes/Effluents (Agro processing industry, Paper & Pulp Industry, Milk processing, Sugar Industry etc.) (excluding bagasse)." Hence, in the power projects based on cattle dung, mixing of cow dung with any of the other urban waste as indicated above can be done and on which it can very well run Moreover, in a submission of the respondent no 1 dated 04.06.2018, it has been stated that for the plant installed by the respondent no. 1 the methane content prescribed is 45% to 65% as per Original Equipment Manufacturer (OEM) specifications and if only cow dung is used it would be difficult to achieve 45% methane content for all the time, which would result in achieving less than 80% of PLF However, since the Commission has issued a generic tariff order and the respondent no. 1 itself has stated during the course of the hearings and also in its written submissions for determination of the generic tariff, the contentions of the respondent no. 1 with regard to the OEM specifications for fuel mix is relevant for project specific tariff only.

23. In this situation, the Commission is of the opinion that since the cost of fuel is fixed, the operator of the plant is at his liberty to use the fuel mix based on the availability of fuel or for the efficiency of the plant. Therefore, the cow dung may be mixed with any other improving waste (including vegetable waste) as per the requirement and economics of cost.

26. In view of the above facts and circumstances and limitation of the remand case, the issue of revision of capital cost was considered and no new ground was found to revise the Capital Cost in the impugned tariff order dated 05.02.2015. The matter of 'Fuel Mix' is decided in para 23 of this order. Hence, SMP No. 27/2014 stands disposed of."

**8.** Having perused the material on record and the series of orders passed on the subject by the Commission and this Tribunal, we find the fundamental error committed by the Commission in treating the order of remand by judgment dated 18.04.2018 as an order for review. In the process, certain crucial observations recorded by this Tribunal in judgment dated 18.04.2018 seem to have escaped the notice of the Commission resulting in the scrutiny undertaken in the remand proceedings limited and palpably erroneous.

**9.** In the above facts and circumstances, we had asked on 28.07.2022 the learned counsel for the Commission to take instructions as to whether the Commission is inclined to revisit these two issues. The learned counsel, upon instructions, submits at the hearing today that the Commission is ready to revisit the matter. It appears the second respondent M.P. Power Management Company Limited is opposed to the contentions being urged by the appellant and also seeks to be heard. The learned counsel for the appellant, on questions in such regard being raised, clarified that though all necessary material for prudence check on the first issue had already been submitted; the appellant is ready and inclined to cooperate by sharing such further material as may be required by the Commission for necessary scrutiny.

**10.** In above facts and circumstances, while reserving the right of all stakeholders, including the second respondent herein to be heard, we set aside the impugned decision dated 05.02.2019 and remit the two issues mentioned above for fresh decision by the Commission. Needless to add the issues have plagued the relationship of the parties too long and there has to be a sense of urgency and, therefore, we would direct the Commission to render its fresh decision at the earliest, preferably within three months of the date of this judgment.

**11.** Ordered accordingly.

**12.** The appeal is disposed of in above terms.

**(Sandesh Kumar Sharma)**  
Technical Member

*vt/mkj*

**(Justice R.K. Gauba)**  
Officiating Chairperson