

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.105/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S Bakshi, Member

Dr. M. K. Iyer, Member

Date of Order: 20th of December, 2016

In the matter of

Petition under Section 79 (1) (a) of the Electricity Act, 2003 and Regulations 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions of recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 challenging the illegal and arbitrary rejection of grant of REC application of the petitioner by the Respondent.

And

In the matter of

Oudh Sugar Mills Ltd.
P.O. Oudh Sugar Mills Ltd.
P.O.Hargaon, District Sitapur, Uttar Pradesh

Vs

....Petitioner

National Load Despatch Centre
1st Floor, NLDC Office,
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110 016

...Respondent

Parties Present:

Shri Pankaj Bhagat, Advocate for the petitioner
Shri Sadre Alam, Advocate for the petitioner
Shri R.K.Agarwal, OSML
Ms. Surbhi Agarwal, OSML
Shri Shaliendra Verma, NLDC
Ms. Abiha Zaidi, NLDC

ORDER

The petitioner, Oudh Sugar Mills Ltd., has filed the present petition under

Regulations 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC Regulations) seeking a direction to National Load Despatch Centre (NLDC) to issue 9791 nos of Renewable Energy Certificates for the energy generated and supplied from its bagasse based co-generating plant at Hargaon during the month of March, 2014 as per the applicable regulations and procedure.

Facts of the Case:

2. The petitioner is a company engaged in manufacture of sugar and has set up a bagasse based co-generation power plant with total installed capacity of 26.5 MW in Hargaon, Sitapur district in the State of Uttar Pradesh. The units were registered by the Central Agency on 23.12.2011 for grant of RECs under the REC Regulations. Pursuant to receipt of verified energy injection report from UPSLDC on 1.4.2014, the petitioner on 10.9.2014, applied to NLDC for grant of RECs for the period of March 2014 through web based application along with online energy injection report. The petitioner is stated to have submitted hard copy of the application along with Energy Injection Report verified by SLDC and payment details of the issuance fees on 18.9.2014 which was received by NLDC on 19.9.2014. The petitioner vide its email dated 22.9.2014 once again sent to NLDC the application along with documents. NLDC vide its email dated 15.10.2014 informed that REC for the month of March 2014 had lapsed in the absence of signed online energy injection report by the authorized signatory of the petitioner. NLDC vide its e-mail dated 25.9.2014 informed the petitioner to rectify the said error. The petitioner vide its email dated 25.11.2014 tendered its apology for the inadvertent error and submitted signed copy of the Online Energy Injection Report. The petitioner followed up with NLDC vide its email dated 17.2.2015 and 11.3.2015 for issuance of RECs. NLDC vide its email dated 15.4.2015 informed the petitioner that since NLDC did not get any response from the petitioner within

the next twenty days from 25.9.2014, the EICs for the month of March 2014 had lapsed and accordingly denied to issue RECs to the petitioner. The petitioner followed up with NLDC vide its letter dated 11.3.2015, 16.3.2015 and 23.12.2014 for issuance of RECs. The petitioner has averred that no response was received from NLDC despite submission of the complete application with relevant documents, therefore, NLDC does not have any justified reason for denying issuance of RECs when SLDC has approved issuance of RECs and the petitioner has submitted the application for issuance of RECs within six months of expiry of energy generation in accordance and compliance with the REC Regulations and Procedures made thereunder. The petitioner also averred that the number of RECs verified and approved by SLDC was same as demanded by petitioner from NLDC, in its online application and also through hard copy. The petitioner has filed the present petition seeking a direction to NLDC to issue 9791 nos. of RECs for the energy generated during the month of March 2014. It is also the case of the petitioner that inadvertent error in the nature of procedural lapse shall not take away statutory rights. The petitioner, in support of his contention, has placed its reliance on the Hon`ble Supreme Court cases in Kailash Versus Nankhu and Ors [(2005) 4 SCC 480]; Sushil Kumar Sen vs State of Bihar [(1975) 3 SCR 942]; The State of Punjab and Anr. Vs Shamlal Murari and Anr. [(1976) 2 SCR 82]; Sangram Singh vs Election Tribunal, Kotah [(1955) 2 SCR 1] and Banwari Lal Vs Balbir Singh (Supreme court - CA No. 6567/2015).

3. NLDC in its reply dated 2.9.2016 has submitted that as per Regulation 7 of the REC Regulations, eligible entity is required to apply to NLDC for issuance of REC within six months from corresponding generation from eligible renewable energy projects. NLDC has stated that procedure made under REC Regulations prescribed a step by step procedure which should be followed while issuing RECs to an eligible entity. Regulation 7 (1), (2), (4)

and (5) of the REC Regulations and Step 1 of the REC Procedure uses the word 'shall' which generally denotes that a provision is imperative in nature and should be strictly complied with. Hon`ble Supreme Court in the case of Commissioner of Central Excise, New Delhi Vs. Hari Chand and Others [(2011) 1SCC 236] categorically held that for the purpose of claiming an exemption or concession, stipulated conditions which are mandatory in nature must be obeyed or fulfilled exactly. The failure on the part of the petitioner in complying with the necessary requirement of sending a duly signed online energy injection report within a stipulated period of six months is not excusable.

Analysis and Decision:

4. We have considered the submissions of the petitioner and the respondent. The main reason for non-issuance of RECs is non-submission of online signed copy of energy injection report by the petitioner to NLDC. On 10.9.2014, the petitioner made an application to NDLC for issuance of RECs for the month of March 2014 through web based application which was within stipulated time limit. However, energy injection report attached with application was not signed. NLDC has admitted that it had received the copy of online energy injection report along with SLDC verified injection report, physical application and payment details. However, the copy of online energy injection report so received was not duly signed by the petitioner`s authorized signatory.

5. Regulation 7 of the REC Regulations provides as under:

“7. Denomination and issuance of certificates:

(1) The eligible entities shall apply to the Central Agency for certificates within six months from corresponding generation from eligible renewable energy projects:

Provided that the application for issuance of certificates may be made on 10th, 20th and last day of the months;

- (2) The certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of certificates, as may be stipulated in the detailed procedure, are complied with by the eligible entity
- (3) The certificates shall be issued by the Central Agency within fifteen days from the date of application by the eligible entities.
- (4) The certificates shall be issued to the eligible entity on the basis of the units of electricity generated from renewable energy sources and injected into the grid or deemed to be injected in case of self consumption by eligible captive generating plant, and duly accounted in the Energy Accounting System as per the Indian Electricity Grid Code or the State Grid Code as the case may be, and the directions of the authorities constituted under the Act to oversee scheduling and dispatch and energy accounting, or based on written communication of distribution licensee to the concerned State Load Despatch Centre with regard to the energy input by renewable energy generators which are not covered under the existing scheduling and dispatch procedures.
- (5) The process of certifying the energy injection shall be as stipulated in the detailed procedures to be issued by the Central Agency;
- (6) Each Certificate issued shall represent one Megawatt hour of electricity generated from renewable energy source and injected or deemed to be injected (in case of self consumption by eligible captive generating plant) into the grid. ”

6. Detailed Procedure of REC Regulations provides as under:

“3. STEP-WISE DESCRIPTION OF THE PROCEDURE

3.1 Step1: An application for issuance of Renewable Energy Certificate shall be made by the Eligible Entity to the Central Agency. The eligible entity shall apply for issuance of REC on the Web Based Application and shall also submit the same information in physical form with the Central Agency. The online application shall be acceptable by the Central Agency only if complete in all respect. The physical application for issuance of certificate shall include (i) Energy Injection Report duly certified by the concerned State Load Despatch Centre and shall be made in the specified format (Format-3.1): Application for Issuance of Renewable Energy Certificates to the Eligible Entities”, (ii) Print out of online application duly signed and stamped by Authorized signatory, (iii) Commissioning Certificate, only for issuance for the first month after registration..

Step - 5: The Central Agency shall issue Renewable Energy Certificates to the Eligible Entity only after confirming, the claims made by the Eligible Entity, with the duly certified EIR forwarded by the SLDC/ Recommendation of SERC for issuance of RECs. In case of any discrepancy, in the EIR enclosed by the Eligible Entity along with Application and regular EIR received by Central Agency from concerned State Load Despatch Centre, the information contained in regular EIR furnished by concerned State Load Despatch Centre shall be considered as final and binding for the purpose of issuance of Renewable Energy Certificates. However, in case energy units reported under EIR by concerned State Load Despatch Centre exceed that claimed by Eligible Entity for same period then, Central

Agency shall seek necessary clarification from concerned State Load Despatch Centre before issuance of the Renewable Energy Certificates. The denomination of each REC issued would be as per the CERC REC Regulations and amendments thereof, and 1 REC would be taken as equivalent to 1 MWh of electricity generated from renewable energy source and injected or deemed to be injected (in case of self-consumption by eligible captive power producer) into the grid. It is clarified that any fractional component of energy as per the Energy Injection Report can be accumulated and would be considered for issuance of RECs as per the CERC REC Regulations.

Step-6: The Central Agency shall issue the Renewable Energy Certificates to the Eligible Entity within fifteen (15) working days from the date of receipt of physical application form along with complete information necessary for processing of application for issuance of RECs.

Step-7: In case the Eligible Entity is not fulfilling any of the conditions mentioned under Step-5 and fails to provide necessary information/clarification in the matter within stipulated timeframe, the Central Agency may reject the application and shall intimate to the Eligible Entity, in writing, the reasons for rejecting the application for issuance of RE certificates.

As per the above provisions, the eligible entity is required to apply for issuance of REC on the Web Based Application and is also required to submit the same information in physical form with the Central Agency within six months from the month of which RECs certificates are sought. The online application shall be acceptable by the Central Agency only if complete in all respect. The physical application for issuance of certificate shall include (i) Energy Injection Report duly certified by the concerned State Load Despatch Centre, and (ii) Print out of online application duly signed and stamped by Authorized signatory, etc. The petitioner has submitted that physical copy of the application along with Energy Injection Report was submitted by it to NLDC on 18.9.2014 which was received by NLDC on 19.9.2014. NLDC vide its e-mail dated 25.9.2014 informed the petitioner to submit signed copy of the energy injection report. Subsequently, NLDC vide its email dated 15.10.2014 intimated the petitioner that since the petitioner has not submitted signed copy of the energy injection report along with application, RECs for the month of March 2014 are rejected. However, the petitioner sent signed copy of the energy injection report vide its email dated 25.11.2014.

7. According to NLDC, the petitioner was obligated to comply with the mandatory requirement of sending a duly signed and stamped copy of the on-line energy injection report within a stipulated period of six months for which a reasonable opportunity was given to the petitioner to submit the signed copy of the energy injection report. NLDC has submitted that while informing the petitioner about the defect, NLDC vide its e-mail dated 25.9.2014 granted the petitioner a reasonable opportunity including 15 days over and above the date on which six months prescribed period was to expire on 30.9.2014, to send the signed copy of the energy injection report. However, the petitioner did not send the copy of signed copy of the energy injection report within time. Therefore, its application for issuance of RECs for the month of March, 2014 was rejected. NLDC has submitted that energy injection report for the month of March 2014 was forwarded by SLDC, UP on 16.7.2014. However, the petitioner undertook the exercise of applying for issuance of RECs only in the month of September, 2014.

8. We are in agreement with the contention of NLDC. The petitioner was required to submit the application for issuance of RECs in all respect in terms of Regulation 7 of the REC Regulations and Detailed Procedure made thereunder. However, the petitioner did not comply with the provisions of the REC Regulations and Detailed Procedure. During the course of hearing, learned counsel for the petitioner submitted that e-mail dated 25.9.2014 of NLDC was misplaced by the petitioner and accepted its error regarding non-submitting the signed copy of energy injection report. Learned counsel further submitted this error is procedural in nature and there is no discrepancy in any of the documents submitted by the petitioner to NLDC. The representative of NLDC agreed that the petitioner is entitled to RECs. However, the same was denied on account of procedural and technical issues for which NLDC has no power/authority to condone the same and can only be done by the

Commission. Learned counsel for the petitioner at the very outset tendered its unconditional apology and submitted that the said error was inadvertent and without any *malafide* intention. Learned counsel for the petitioner submitted that the petitioner has made fresh application for issuance of RECs for the month of March, 2014.

9. In our view, the error of not putting signature in energy injection report is technical in nature and causes no harm to any of the stakeholders, including the respondent. Accordingly, we direct NLDC to process the case of the petitioner for grant of RECs for the month of March, 2014 within one month from the date of issue of this order. We also take serious note of the lack of diligent adherence to procedures by the petitioner and administer a strong warning to the petitioner to be careful in future and comply with the provisions of the REC Regulations with letter and spirit. This should not become a precedent to be quoted in future in case of non-compliance of the provisions of the REC Regulations.

10. The petition is disposed of with the above.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson