



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 107/MP/2019

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member
श्री आई. एस. झा, सदस्य/Shri I. S. Jha, Member

आदेश दिनांक /Date of Order: 28th of January, 2020

IN THE MATTER OF:

Petition under Section 66 and 79 of the Electricity Act, 2003 read with Regulation 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition & issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 for issuance of directions to the Respondent, National Load Despatch Centre, to effect accreditation and registration of the Petitioner under the Renewable Energy Certificates (REC) Mechanism and consequent reliefs.

AND IN THE MATTER:

M/s. Ratedi Wind Power Private Limited
IL&FS Financial Centre,
Plot No. C-22, G-Block, Bandra, Kurla Complex,
Mumbai 400051

....PETITIONER

VERSUS

National Load Despatch Centre
Power System Operation Corporation Limited
Through its Chairman and Managing Director
B-9, Qutab Institutional Area, Katwaria Sarai,

Parties Present: Ms. Swapna Seshadri, Advocate, RWPPL
Shri Ashok Rajan, NLDC
Shri Alok Mishra, NLDC

आदेश/ ORDER

The Petitioner, M/s Ratedi Wind Power Private Limited (formerly known as IL&FS Wind Power Limited), owns and operates a 12 MW wind power project located in Gujarat. The Petitioner has filed the petition under Section 66 and 79 of the Electricity Act, 2003 read with Regulation 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition & issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as 'REC, Regulations, 2010) for issuance of directions to the Respondent, National Load Despatch Centre, to effect accreditation and registration of the Petitioner under the Renewable Energy Certificates (hereinafter referred to as 'REC') mechanism and consequent reliefs.

2. The Petitioner has made the following prayers:
 - a) *Admit the petition;*
 - b) *Hold that the Petitioner is entitled to revalidation of accreditation and registration of REC for the Petitioner's project with effect from 01.09.2018 to 04.12.2018 under the REC Regulations and the procedures laid down thereunder;*
 - c) *Condone the procedural delay if any of the Petitioner in the process for reaccreditation and re-validation;*
 - d) *Direct the Respondent to take necessary action for issuing RECs to the Petitioner for the period 01.09.2018 to 04.12.2018.*
 - e) *Pass such other further order(s) as the Commission may deem just and proper*

Background

3. The Petitioner, Ratedi Wind Power Private Limited (erstwhile IL&FS Wind Power

Limited), owns and operates a 12 MW wind power project located at Village: Govana, Lakhasar Hapa, Mahadeviya, Rabarka, Aber Sinhan Taluka: Lalpur, Jamjodhpur, Khambhaliya, District Jamnagar in Gujarat.

4. On 31.03.2012, the Petitioner's power project was commissioned (1.6 MW on 30.03.2012 and 10.04 MW on 31.03.2012).
5. On 30.03.2012, the Petitioner entered into a Power Purchase Agreement (hereinafter referred to as 'PPA') for sale of 12 MW power from its project with Gujarat Urja Vikas Nigam Limited (hereinafter referred to as 'GUVNL'), the distribution licensee in the State of Gujarat at APPC tariff.
6. On 13.04.2012, the Petitioner's power project was issued certification of accreditation.
7. On 18.05.2012, the Petitioner's power project was registered with NLDC under REC mechanism. At this time, the Petitioner's company was existing under its former name, 'IL&FS Wind Power Limited' and the accreditation and registration under the REC mechanism was in the former name of the Petitioner company.
8. On 29.08.2013, the Petitioner's company changed its name from IL&FS Wind Power Limited to Ratedi Wind Power Limited.
9. On 19.03.2014, the Petitioner got converted into a private limited company and the name of the company changed from Ratedi Wind Power Limited to Ratedi Wind Power Private Limited.
10. On 25.08.2014, the Petitioner entered into a supplementary PPA with GUVNL for sale of power from its project.
11. On 04.12.2018, the NLDC asked the Petitioner to get a fresh registration under the new name of the company due to change in legal status of the power project.
12. On 05.12.2018, the Petitioner applied for fresh accreditation of its Project and the same was granted to the Petitioner on 24.01.2019.

13. On 30.01.2019, the Petitioner applied for fresh registration under REC mechanism and the registration was granted to the Petitioner on 22.02.2019.
14. On 25.02.2019, the Petitioner informed NLDC that it had complied with the directions of NLDC and had obtained fresh accreditation/and registration under REC mechanism. However, RECs for the period from 01.09.2018 to 21.02.2019 have not been issued to the Petitioner.
15. On 27.02.2019, NLDC informed the Petitioner that in case of change in the legal status of the Petitioner company, RECs would be given to the Petitioner only from the date of application for fresh accreditation i.e. from 05.12.2018.
16. The Petitioner filed the petition for direction to the Respondent to take necessary action for issuing RECs to the Petitioner for the period 01.09.2018 to 04.12.2018.

Submissions of the Petitioner

17. The Petitioner has submitted that it owns and operates a 12 MW wind power project located in district Jamnagar in Gujarat. The project was commissioned on 31.03.2012 (1.6 MW on 30.03.2012 and 10.04 MW on 31.03.2012). The Petitioner had entered into a PPA for sale of 12 MW power from its Project with GUVNL on 30.03.2012. The Petitioner's Project as an eligible entity received accreditation for the first time under the REC mechanism on 13.04.2012 and was registered on 18.05.2012 in the former name of the company i.e. 'IL&FS Wind Power Limited'. On 29.08.2013, the name of the Petitioner's company was changed from IL&FS Wind Power Limited to Ratedi Wind Power Limited and thereafter Ratedi Wind Power Limited got converted into a private limited company. Hence, the name of the company changed from Ratedi Wind Power Limited to Ratedi Wind Power Private Limited. Subsequent to the change in the name and legal status of the company, it entered into a supplementary PPA with GUVNL on 25.08.2014 for sale of power from its project. It had been receiving RECs throughout the time when the Petitioner's company was undergoing the change in name.
18. The Petitioner has submitted that it received an email from NLDC on 04.12.2018 wherein NLDC sought information with respect to the change in the legal status of the company.

NLDC further asked the Petitioner to get a fresh registration under the new name of the company.

19. The Petitioner has submitted that in compliance with the email dated 04.12.2018 of NLDC, it applied for fresh accreditation of its Project on 05.12.2018. The fresh Accreditation was granted on 24.01.2019. It thereafter applied for fresh registration on 30.01.2019 and the registration was granted to the Petitioner on 22.02.2019. However, RECs have not been issued to the Petitioner for the period from 01.09.2018.
20. The Petitioner has submitted that NLDC was informed that it had complied with the directions of NLDC and had applied for fresh accreditation and registration which had been granted. However, NLDC informed it that in case of change in the legal status of the Petitioner company, RECs would be given to the Petitioner only from the date of application for fresh accreditation i.e. from 05.12.2018. Further, NLDC has stated that it does not have the power to condone the procedural/technical issues and the same can only be done by the Commission.
21. The Petitioner has submitted that NLDC has not given the RECs to the Petitioner from the period from 01.09.2018 to 04.12.2018.
22. The Petitioner has submitted that the Commission has also held that the requirement of following procedural formalities and processes have to be interpreted in a manner to facilitate the achievement of the primary objective of promoting renewable energy generation and not to defeat the same. The Petitioner being a generator of renewable energy and selling power (at the pooled cost of power purchase) to GUVNL (which is the distribution licensee in the State of Gujarat) is an eligible entity to avail RECs. The Petitioner has placed its reliance on the following Orders of the Commission in similar matters: *Nu Power Renewables Private Limited & Anr v. National Load Despatch Centre & Anr., Order dated 02/03/2017 in Petition No. 308/MP/2015*; *Rai Bahadur Seth Shreeram Narasingdas Private Limited v. National Load Despatch Centre (NLDC) & Ors., Order dated 09.11.2017 in Petition No. 141/MP/2017*; *M/s Mirra and Mirra Industries v. National Load Despatch Centre & Anr., Order dated 11.02.2019 in Petition No. 22/MP/2019*; *M/s Shalimar Visuals Private Limited v. National Load Despatch Centre & Anr., Order dated 11.02.2019 in Petition No. 129/MP/2018*. The Petitioner has also placed its reliance on the

judgment of APTEL in *Simran Wind Power Private Limited & Ors v Central Electricity Regulatory Commission & Anr*, Appeal No. 156 of 2013 and 248 of 2013 - judgment dated 28/11/2014.

23. The Petitioner has submitted that it has acted in compliance with the directions that were issued to it by NLDC and that there has been no slackness on its part. Therefore, it ought not to be left devoid of the benefit of REC on the hyper technical issues.
24. The Petitioner has submitted that it is a well settled principle of law that procedural law and procedural aspects are meant to be subservient to the substantive law and cannot take away the rights of the parties under the substantive law. In this regard, the Petitioner has placed its reliance on the decision of the Hon'ble Supreme Court in the case of *Saiyad Mohammad baker El-Edross v Abdulhabib Hasan Arab (1998) 4 SCC 343*, wherein it has been held as under –

“8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.”

25. The Petitioner has submitted that all the substantive conditions laid down in the REC Regulations, 2010 for grant of RECs have been fulfilled by it. It has not availed any other concessional or promotional measures and has acted in terms of the REC Regulations, 2010 and the settled principles of law. A mere technicality cannot be used as a tool to deny the Petitioner of its substantive right.

Submissions of the Respondent

26. The Respondent has neither submitted any reply nor denied the contentions raised by the Petitioner. In the hearing held on 25.11.2019, the Respondent has submitted that it has acted as per Clause 4.1(h) of the REC Regulations, 2010.

Analysis and Decision

27. The Petitioners have filed the petition on 09.04.2019, admitted on 04.06.2019 and reserved for Orders on 25.11.2019. We have heard the learned counsels for the Petitioner and the Respondent and have carefully perused the records. The brief facts of the case are as under:
28. The Petitioner Ratedi Wind Power Private Limited, owns and operates a 12 MW wind power project located at Jamnagar in Gujarat as per details given below:

Project Owner	Accreditation Number	Registration Number	Registered Project Capacity (MW)	Mode of sale of power	Location
Ratedi Wind Power Private Ltd.	GJ0NSRWPP L001A24011 9	GJ0NSRWP PL001R220 219	12 MW	APPC	Gujarat

29. The Petitioner has submitted that it underwent a change in name from “IL&FS Wind Power Limited” to “Ratedi Wind Power Ltd.” and subsequently, underwent a change in legal status i.e. conversion from a public limited company (Ratedi Wind Power Ltd.) to private limited company (Ratedi Wind Power Private Ltd.). Subsequent to change in legal status, the Petitioner entered into a supplementary agreement with GUVNL. The Petitioner has submitted that it is entitled to revalidation of accreditation and registration of its project with effect from 01.09.2018 to 04.12.2018 under the REC Regulations, 2010 and the procedures laid down thereunder and accordingly, RECs for the said period. The Petitioner has further submitted that after receiving an email from the NLDC, it applied for fresh accreditation on 05.12.2018. Thereafter, the project was accredited and registered in the present name. The Petitioner has submitted that it has not received RECs for the energy generated during the period from 01.09.2018 to 04.12.2018. *Per contra*, the Respondent has submitted that NLDC has acted as per Clause 4.1(h) of the REC Regulations, 2010.
30. From the submissions of the parties, the following issues arise before this Commission.

Issue No 1: Whether the Petitioner is entitled to revalidation of accreditation and registration of REC for the Petitioner's project with effect from 01.09.2018 to 04.12.2018 under the REC Regulations and the procedures laid down thereunder? AND

Issue No 2: Whether the Petitioner is entitled to avail the benefit of REC for the electricity generated/ injected in the grid from 01.09.2018 till 04.12.2018?

31. Since issue no. 1 and issue no.2 are interrelated, the same are taken for discussion together. The Petitioner has submitted that it is entitled to revalidation of accreditation and registration of its project with effect from 01.09.2018 to 04.12.2018 under the REC Regulations, 2010 and the procedures laid down thereunder whereas the NLDC has denied the same quoting that as per Clause 4.1(h) of the REC Regulations, 2010, it is mandatory for fresh accreditation and registration.
32. The Commission observes that relevant provision in the event of change in legal status as enunciated in the 'Procedure for Registration of Renewable Energy Project by Central Agency approved by the Commission' (hereinafter referred to as 'REC Registration Procedures') dated 17.02.2014 in Order No. No. L-1/12/2010-CERC which were prevalent at the time of change in legal status of the Petitioner stipulates as under:-

"4.1...

h. Whenever there is a change in legal status of registered entity (e.g. change from partnership to company, Pvt. Limited to Public Limited, new entity subsequent to demerger, change in ownership of the company, asset sale/transfer to other company, etc.), it shall inform the concerned State Agency and the Central Agency within one month from the date of said change, along with the following:

- i) request for revocation of the project from the REC Mechanism*
- ii) request for re-accreditation/fresh accreditation and re-registration/fresh accreditation of the project under REC, if desired*
- iii) request for transfer of RECs to the new entity*

Supporting documents including revised PPAs (if any) and Certificate from Registrar of Companies must be submitted.

Upon verification, the State Agency shall accredit the new legal entity, and update the Central Agency. Subsequently the Central Agency shall register the new legal entity, and transfer ownership of existing valid RECs.

New RECs to be issued to the new entity from the date of application for re-accreditation/fresh accreditation.

In cases involving a change in name of the registered entity, it shall inform the concerned State Agency and the Central Agency within one month from the date of said change, along with relevant documents including but not limited to Board Resolution regarding the name change, certificate of name change from Registrar of Companies, approval of concerned authorities, State Agency etc.”

33. From the above, it is evident that after the change in legal status, the Petitioner in order to participate in the REC mechanism, was to apply for fresh accreditation and registration in the name of M/s Ratedi Wind Power Pvt. Ltd. The Commission observes that the Petitioner had not informed about the change of legal status despite it entering into a supplementary PPA with GUVNL on 25.08.2014 for sale of power from its project. Hence, there has been delay in compliance of the REC Procedures by the Petitioner. It is observed that the Petitioner in response to the communication from the Respondent dated 04.12.2017, applied for fresh accreditation on 05.12.2018 as per the suggestion of the Respondent. The Petitioner has been granted accreditation on 24.01.2019 and subsequently was granted registration on 22.02.2019 and has been receiving REC from 05.12.2018 onwards. However, the Respondent did not issue REC for generation during the period 01.09.2018 upto 04.12.2018.
34. The Commission observes that the renewable power was generated during the period 01.09.2018 upto 04.12.2018 by the Petitioner being the RE generating station itself. As per the principle laid down for grant of RECs, if the Petitioner is engaged in generation of electricity from renewable energy sources then it shall be eligible for issuance of RECs if it sells the electricity generated to the distribution licensee of the area in which the eligible entity is located, at the pooled cost of power purchase of such distribution licensee as determined by the Appropriate Commission or selling power to third party/open access or for generating and injecting power for captive use subject to the eligibility criteria as per the REC Regulations, 2010 as amended from time to time. Further, the main objective of REC Regulations, 2010 is to promote the generation of renewable energy and we observe that there was generation of renewable energy for the period mentioned above. The Commission allows M/s Ratedi Wind Power Private Ltd. (the Petitioner), RECs for the period 01.09.2018 upto 04.12.2018 as per terms and conditions of the REC Regulations, 2010. Accordingly, we direct Respondents to process the case of the Petitioner for grant of RECs

for the generation during the period 01.09.2018 upto 04.12.2018 for the project of M/s Ratedi Wind Power Private Ltd. subject to the review of the application in line with the energy injection report.

35. Accordingly, the Petition No. 107/MP/2019 is disposed of in terms of the above.

Sd/-
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