



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 05/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: 11th of December, 2019

IN THE MATTER OF:

Petition under section 79 (1) of the Electricity Act, 2003 and sections 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, challenging the rejection of renewable energy certificate application of the Petitioner by the Respondent

AND IN THE MATTER:

ITC Limited, India Tobacco Division
Plot No. B 27, MIDC, Ranjangaon,
Taluka – Shirur
Pune - 412220
Having registered office at
Virginia House, 37 J.L. Nehru Road,
Kolkata – 700 071

....PETITIONER

Versus

The Nodal Officer, REC Mechanism,
1st Floor, National Load Despatch Centre (NLDC) Office
B-9, Qutab Institutional Area,
Katwaria Sarai
New Delhi-110016

...RESPONDENT

Parties Present: Shri M.G. Ramachandran, Senior Advocate, ITC
Shri Gajendra, POSOCO (NLDC)

आदेश/ ORDER

The Petitioner, M/s ITC Ltd., had set up a wind farm consisting of three Turbines which are located at Nandurbar, Maharashtra and registered under REC mechanism. The Petitioner has filed the petition under section 79 (1) of the Electricity Act, 2003 and sections 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, (hereinafter referred to as 'REC Regulations, 2010') challenging the rejection of Renewable Energy Certificate (hereinafter referred to as 'REC') application and seeking directions to the Respondent to issue 1585 nos. of RECs for the energy generated and supplied from its Wind power plants in the State of Maharashtra during the month of April, 2016.

2. The Respondent, National Load Dispatch Centre, as defined under Section 26 of the Electricity Act, 2003 is the nodal agency for issuance of RECs as provided in regulation 3 of the REC Regulations, 2010.
3. The Petitioner has made the following prayers:
 - a) *Condone the delay of 2 days in submission of the hard copy of application for issuance of RECs for wind energy generated by the Petitioner in April 2016; and*
 - b) *Direct Respondent to issue 1585 nos. of RECs to the Petitioner in accordance with the certified energy injection submitted by the Petitioner for generation of wind energy*

- during April 2016 from the Petitioner's wind turbines; and*
- c) In alternative direct the Respondent to process the Petitioner's application for issuance of RECs for the wind energy generated in the month of April 2016.*

Submissions of the Petitioner

4. The Petitioner has submitted that it had set up a wind farm consisting of three Turbines which are located at Nandurbar, Maharashtra. All the three units are connected and synchronized with the Maharashtra grid and were registered by the Central Agency w.e.f. 04.05.2012 for grant of RECs under the REC Regulations, 2010 as amended from time to time. The Petitioner has been claiming RECs from NLDC since May, 2012, under the provisions of REC Regulations, 2010.
5. The Petitioner has submitted that on 20.09.2016, the Petitioner had applied to NLDC for issuance of RECs for the wind energy generated in the month of April, 2016 through an online application along with online Energy Injection Report (hereinafter referred to as 'EIR') and all requisite details and in approved format, on website of the Respondent.
6. The Petitioner has submitted that it received EIR for the month of April, 2016 from Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as 'MSEDCL') on 24.10.2016. On receipt of such certified EIR, the Petitioner immediately sent the physical copy of the application for issuance of RECs for the month of April 2016 along with the supporting documents, to Delhi through FEDEX courier services. However, owing to Diwali vacations from 29.10.2016 to 01.11.2016 the physical copy of the REC application for the month of April 2016 along with the supporting documents could not be submitted within time. The physical application along with Maharashtra SLDC verified EIR report and payment details of the issuance fees were received by the Nodal Officer, NLDC only on 02.11.2016 i.e. two days after the expiry of the timeline of six months as specified under Regulation 7 of the REC Regulations, 2010.
7. The Petitioner has submitted that NLDC was in receipt of the physical copy of the REC Application on 02.11.2016. However, NLDC vide its email dated 06.02.2017 informed the

Petitioner that since the application for the month of April, 2016 has been received after six months of the generation, the said application would not be accepted and no RECs would be issued. The relevant portion of the email sent by the Respondent to the Petitioner dated 06.02.2017 is reproduced herein below:

“Failed to furnish the documents for issuance of RECs for the month of Apr'16 within six months. Hence, the application will not be accepted and no RECs issued for the said month.”

8. The Petitioner has submitted that in pursuance to the email dated 06.02.2017, the Petitioner vide its email dated 09.02.2017 informed NLDC that its representative had attempted to submit the physical copy of the REC application for April 2016 within the six month deadline despite the Diwali holidays but was unable to do so.

9. The Petitioner has submitted that the online application for issuance of RECs for the month of April 2016 along with the requisite NLDC charges were also deposited by the Petitioner within time. However, due to intervening Diwali vacations, the hard copy of the application was submitted after a delay of 2 days. The error was purely procedural and technical in nature. It is pertinent to note that the certified EIR were received from Maharashtra SLDC only on 24.10.2016. In view of the aforementioned facts and circumstances, it is imperative to state that though the online application (complete in all respects) was applied/punched within the time stipulated, the late submission of the hard-copy of the application was only on account of Diwali Holidays. It is further submitted that this delay of 2 days was merely procedural in nature as the application was complete in all respects and the same was punched online within the time stipulated. The denial of RECs on the ground of submission of the applications beyond the stipulated period will go against the objective and spirit of promoting renewable energy generation and for the development of market in power from Non-Conventional Energy Resources by issuance of transferable and saleable credit certificates. The Petitioner 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] and the Commission`s Order dated 20.12.2016 in Petition No. 105/MP/2016.

Analysis and Decision

10. The Petition was admitted on 11.04.2019 and was reserved for Orders on 17.09.2019. The Petitioner submitted that the present Petition has been filed for seeking condonation of two days delay in submission of hard copy of application for issuance of RECs for wind energy generated by the Petitioner in the month of April, 2016 and requested to condone the same. NLDC has submitted that *“it has no objection in this regard”*. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records. The brief facts of the case are as under:

11. The Petitioner owns and operates 3 projects in the State of Maharashtra, as below

S. No	Location	Certificate of Accreditation	Certificate of Registration
1	Taluka & Dist.	MH0NSITCLT001A190312	MH0NSITCLT001R040512
2	Nandurbar,	MH0NSITCLT002A190312	MH0NSITCLT002R040512
3	Nandurbar, Maharashtra	MH0NSITCLT003A190312	MH0NSITCLT003R040512

12. All the above projects are accredited and registered as Eligible Entity under REC mechanism. The Petitioner has been receiving the RECs for the electricity generated from the projects since May, 2012. The Petitioner had sent physical copy of application for issuance of RECs for the month of April, 2016 via courier on 25.10.2016. The Respondent received the aforesaid physical copy of the application on 02.11.2016 which is 2 days later than the last date of submission i.e. 31.10.2016. There were Diwali holidays from 29.10.2016 to 01.11.2016. The Respondent informed the Petitioner on 06.02.2017, that due to submission of physical application later than six months from the date of actual generation, the RECs could not be issued for the month of April 2016.

13. The Commission observes that the main reason for non-issuance of RECs by NLDC is the non-submission of physical copy of the application by the Petitioner within six months as

specified under Regulation 7 of the REC Regulations, 2010. It is observed that the Petitioner received the certified EIR from Maharashtra SLDC on 24.10.2016.

14. The Commission observes that the Petitioner made an application to NLDC for issuance of RECs for the month of April, 2016 through web based application on 20.09.2016, which was within stipulated time limit under Regulation 7 of the REC Regulations, 2010. However, due to receipt of certified EIR from Maharashtra SLDC only on 24.10.2016 the Petitioner could despatch the physical copy of the application complete in all respects on 25.10.2016. Due to Diwali vacations from 29.10.2016 till 01.11.2016 the impugned physical application reached NLDC on 02.11.2016. NLDC rejected the claim of the Petitioner regarding issuance of REC since the application for April, 2016 was received six months after the corresponding generation.

15. 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 month.

(2) The Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificate, 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 Dispatch 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”

16. Detailed Procedure of REC Regulations provides as under:

“3. STEP-WISE DESCRIPTION OF THE PROCEDURE

...

3.1 Step-1: 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 Authorised Signatory (iii) Commissioning Certificate, only for issuance for the first month after registration. ...

3.5 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 Energy Injection Report submitted by the SLDC. In case of any discrepancy, in the Energy Injection Report enclosed by the Eligible Entity along with Application and regular Energy Injection Report received by Central Agency from concerned State Load Despatch Centre, the information contained in regular Energy Injection Report 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 Energy Injection Report 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 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.

3.7 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.”

17. From the above, the Commission observes that the eligible entity is required to apply for issuance of RECs 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

corresponding generation. The online application shall be acceptable by the Central Agency only if it is complete in all respects. The physical application for issuance of certificate shall include (i) EIR duly certified by the concerned State Load Despatch Centre, and (ii) Print out of online application duly signed and stamped by Authorized signatory, etc.

18. The Commission observes that the Petitioner has applied for RECs through web based application on 20.09.2016, which was within stipulated time limit under Regulation 7 of the REC Regulations, 2010. However, due to late receipt of certified energy injection report from Maharashtra SLDC, the physical copy of the application along with energy injection report was sent to NLDC on 25.10.2016 by courier which was received by NLDC on 02.11.2016. Thus, the Petitioner had failed to submit physical applications for issuance of RECs along with relevant documents, within the stipulated time limit of six months, and thus defaulted in complying with the requirement under the REC Regulations, 2010 and procedures as amended/ revised/ modified by the Commission from time to time. The Petitioner has admitted that there was a delay of 2 days in filing of hard copy of application to NLDC, beyond the allowable time of six months.

19. The Commission observes that though the application (complete in all respects) was applied/punched within the time stipulated and was within limitation, the late submission of the hard-copy of the complete form was on account of late receiving of the certified copies of EIR from Maharashtra SLDC i.e. on 24.10.2016 and Diwali Holidays from 29.10.2016 to 01.11.2016. The Petitioner has accepted its mistake regarding non-submitting the physical copy of the application within time. The Petitioner further submitted that this mistake was procedural in nature and the application was punched within the time stipulated and was within limitation. NLDC has agreed that the Petitioner is entitled to RECs, but the same was denied on account of procedural and technical issues for which NLDC has no power/authority to relax. The condonation could only be done by the Commission.

20. In our view, since the Petitioner has already submitted the application on-line within time and paid the NLDC processing fees, condonation of delay in submission of the physical copy of the application by 2 days does not adversely affect the right of any other party including that of NLDC. Therefore, we direct NLDC to process the case of the Petitioner

for grant of 1585 RECs for the month of April, 2016 within one month from the date of issue of this order.

21. Accordingly, the Petition No. 05/MP/2019 is disposed of.

Sd/-

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सदस्य

Sd/-

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सदस्य

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पी. के .पुजारी
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