



NEW DELHI/ नई दिल्ली

याचिका संख्या. /Petition No.: 76/MP/2018

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: 21<sup>st</sup> of November, 2019

**IN THE MATTER OF:**

Petition under Regulations 14, 5(3) and (4) of the Central Electricity Regulatory Commission (Terms and conditions for Recognition and issuance of Renewable Energy Generation) Regulations, 2010 for grant of renewable energy certificates to the Petitioner from the date of the commissioning of the 24 MW Bhilangana–III Hydro Electric Project.

**AND IN THE MATTER:**

Bhilangana Hydro Power Ltd.  
B-37, IIIrd Floor, Sector-1,  
Gautam Budh Nagar, Noida,  
Uttar Pradesh, 201301, India

...Petitioner

VERSUS

National Load Despatch Centre  
Power System Operation Corporation Limited  
General Manager (REC)  
Ist Floor, B-9, Qutab Institutional Area, Katwaria Sarai,  
New Delhi – 110016

Uttarakhand Renewable Energy Development Agency  
Chief Project Officer,  
Patel Nagar Bypass, Energy Park Campus,  
Niranjanpur, Dehradun - 248121  
Uttarakhand

...Respondents

**Parties Present:** Shri Anand K. Ganesan, Advocate, BHPL  
Shri Arjun Krishnan, Advocate, NLDC  
Shri Ankur Singh, Advocate, NLDC  
Shri Ashok Rajan, NLDC

### आदेश/ ORDER

The Petitioner, M/s Bhilangana Hydro Power Ltd., is a generating company having developed and commissioned a 24 MW small hydro project at Village Ghuttu, Tehsil Ghansali, District Tehri Garhwal in the State of Uttarakhand. The Petitioner has filed the instant Petition under Regulations 14, 5(3) and (4) of the Central Electricity Regulatory Commission (Terms and conditions for Recognition and Issuance of Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as 'REC Regulations, 2010') for grant of Renewable Energy Certificates from the date of the commissioning of the 24 MW Bhilangana–III Hydro Electric Project.

2. The Respondent No. 1, National Load Dispatch Centre (hereinafter referred to as 'NLDC') is the Central Agency as designated under sub clause (1) of the Regulation 3 of REC Regulations, 2010. The Respondent No. 1 is responsible for undertaking the process of registration of eligible entities, issuance of certificates, maintaining and settling accounts in respect of the certificates as prescribed under the REC Regulations.

3. The Respondent No. 2, Uttarakhand Renewable Energy Development Agency (hereinafter referred to as 'UREDA'), is the designated agency appointed by Uttarakhand Electricity Regulatory Commission (hereinafter referred to as 'UERC') to act as the agency for accreditation and recommending the renewable projects for registration with the Central Agency and to undertake such functions as may be specified under Clause (e) of Sub-section (1) of Section 86 of the Act.
4. The Petitioner has made the following prayers:
  - a) *Hold and direct the Respondent No. 1 to issue the Renewable Energy Certificates in respect of the 24 MW Bhilangana Hydro Electric Project of the Petitioner located in the State of Uttarakhand from the date of the commissioning of the Project i.e. 20.12.2011 till the date of registration i.e 28.02.2012;*
  - b) *Award the costs of the litigation to the Petitioner and*
  - c) *Pass such other order as this Commission may deem fit and proper*

**Submissions of the Petitioner:**

5. The Petitioner has submitted that on 25.01.2007, the Government of Uttarakhand and the Petitioner entered into an Implementation Agreement for the purposes of development and implementation of the Project. The Project achieved Commercial Operation of Unit-I, Unit-II and Unit-III on 23rd December, 2011, 16th January 2012 and 20th December, 2011 respectively.
6. The Petitioner has submitted that its project was ready for commissioning as early as in July, 2011, however, the commissioning of the project was delayed substantially on account of the delay in the construction of power evacuation facilities by the transmission licensee in the State of Uttarakhand.
7. The Petitioner has submitted that it applied for accreditation to UREDA in accordance with Regulation 9 (3) of the UERC (Compliance of Renewable Purchase Obligations) Regulations, 2010, for accreditation of the Project developed at the State Level and for recommendation of the Project to the Respondent No. 1 for registration under the REC Regulations, 2010. The

application for accreditation with the Respondent No. 2 was made through the online process on 01.03.2011. However, UREDA granted the accreditation to the Project on 08.02.2012, after a delay of more than 11 months from the date of filing of the Application. Respondent NLDC registered the project on 28.02.2012 after considering the recommendations of the UREDA.

8. The Petitioner has submitted that due to the delay caused by Respondent No. 2 in grant of accreditation to the Project, it resulted in huge financial losses to the Petitioner on account of non-issuance of 11195 RECs equivalent to the units generated by the Project since the date of commissioning of the project i.e. 20.12.2011 till 28.02.2012.
9. The Petitioner has submitted that it has complied with the substantive Regulation 4 and did not take any benefits / concessions under the REC regime.
10. The Petitioner has submitted that it filed a representation on 23.02.2012 before UERC for resolution of the issues arising due to delay in accreditation of the project by the UREDA and prayed for issuance of necessary directions to the effect that the Project be made eligible for accreditation and issuance of RECS from the date of the commissioning of the Project. UERC vide its Order dated 12.06.2012 allowed the representation filed by the Petitioner, and held that the Project is eligible for grant of accreditation by UREDA from the date of the start of generation/commissioning of the Project i.e. 20.12.2011 and accordingly, directed UREDA for taking necessary action for grant of accreditation from the date of commissioning of the Project. UERC further directed the State Load Dispatch Centre and NLDC for taking on record the revised date of accreditation and to take necessary action to ensure that RECs are issued from the aforesaid date.
11. The Petitioner has submitted that on 23.06.2012, UREDA communicated the order dated 12.06.2012 of UERC to NLDC and requested NLDC to take necessary action in terms of the directions issued by UERC.
12. The Petitioner has submitted that vide its letter dated 25.07.2012, it also requested NLDC for taking necessary action in accordance with the Order dated 12.06.2012 passed by UERC and

for grant of RECs from the date of the commissioning of the Project. However, NLDC, vide its letter dated 26.07.2012 stated that it has practical difficulties in issuance of RECs to the Petitioner with retrospective effect. NLDC further stated that the RECs can be granted only after the date of registration of the Project with the Central Agency and not prior thereto.

13. The Petitioner has submitted that it sent letters dated 12.05.2015 and 10.10.2017 pursuing the matter with NLDC. Vide e-mail dated 19.05.2015, NLDC stated that RECs could not be issued prior to the date of its registration with the Central Agency.
14. The Petitioner has stated that NLDC has failed to issue the RECs in respect of the Project, which is to the tune of non-recognition of 11,195 RECs from the date of the commissioning of the generating station till the date when the registration was granted.

**Submissions of the Respondent No. 1 (NLDC):**

15. The Respondent No.1 has submitted that the present petition is devoid of merit as the non-issuance of RECs for the aforesaid period from 20.12.2011 to 28.02.2012 is *inter alia* due to the default of the Petitioner itself. The relief sought by the Petitioner by way of the present petition is not sustainable in light of applicable laws.
16. The Respondent No.1 has submitted that the primary relief sought by Petitioner by way of the present petition is barred by limitation. It is submitted that as per law, as settled by the Hon'ble Supreme Court in the case of *A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.*, (2016) 3 SCC 468, Para 30 and 31, this Commission cannot entertain or allow any such claim which is barred by limitation prescribed for a suit before a civil court. The concerned order of the UERC was issued on 12.06.2012 following which the NLDC issued its letter dated 26.07.2012 rejecting the Petitioner's claims of issuance of RECs and also stated that the Petitioner should approach the Central Electricity Regulatory Commission towards seeking any relief in this regard.
17. The Respondent No.1 has submitted that thereafter, the Petitioner had slept over its rights (if any) with respect to the issuance of RECs for the period from 20.12.2011 to 28.02.2012,

since July 2012 till the time of filing of the present petition in February 2018 which is well beyond the stipulated period of limitation (i.e. beyond three years).

18. The Respondent No.1 has submitted that the specific applicable period of limitation in this regard is specified in Regulation 5(4) of the REC Regulations, 2010 (under which the present petition has been instituted) which states that any person aggrieved by the order of the Central Agency in this regard may appeal before the Central Electricity Regulatory Commission within 15 (fifteen) days from the date of such order. The Petitioner has not proceeded as per the REC Regulations, 2010 in this regard, and the present Petition is an attempt to circumvent the applicable period of limitation as specified in the REC Regulations, 2010. The Petitioner has not filed any application for condonation of delay in this regard before the Commission.
19. The Respondent No.1 has submitted that the Petitioner has failed to demonstrate any reason by way of which the Commission may interfere or entertain the Petition as per the Limitation Act, 1963, despite clearly being barred by limitation and being filed belatedly. Mere sending of later correspondence (e.g. 10.10.2017) would not extend the period of limitation.
20. The Respondent No.1 has submitted that neither the REC Regulations, 2010 nor the *Procedure for Issuance of Renewable Energy Certificates to the Eligible Entity by Central Agency* (hereinafter referred to as 'REC Issuance Procedures') vests any discretionary power on the answering Respondent to relax, extend or condone the delay insofar as the compliance with any of the provisions contained therein are concerned. On the other hand, the language of the REC Regulations, 2010 and the REC Issuance Procedures makes it abundantly clear that the provisions contained therein are mandatory in nature and entail strict compliance on the part of an eligible entity as well as the 'Central Agency' i.e. the answering Respondent.
21. The Respondent No.1 has submitted that relevant provisions of REC Issuance Procedures, approved by the Commission's order dated 09.11.2010, are extracted below:-

“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 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) Registration Certificate The application shall be accompanied by applicable fee & charges towards issuance of certificates as determined by CERC from time to time. While making application for issuance of RECs, the Applicant (Eligible Entity) shall quote the unique Registration Number assigned to it by Central Agency at the time of registration. ...*

...  
*3.5 Step-5: The Central Agency shall only issue Renewable Energy Certificates to the Eligible Entity after confirming, the claims made by the Eligible Entity, with the 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."*

22. The Respondent No.1 has submitted relevant provisions of REC Issuance Procedures, approved by the Commission's order dated 16.03.2018 which are extracted below:-

*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 as per the details given in the Energy Injection Report (EIR issued by the SLDC / Recommendation of SERC for issuance of RECs) 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 (EIR) for RE projects /Recommendation of SERC for issuance of RECs for distribution licensee, and shall be made in the specified format (FORMAT-3.1: “Application for Issuance of Renewable Energy Certificates to the Eligible Entities”/FORMAT-3.1.1 for distribution licensee) (ii) Print out of online application duly signed and stamped by Authorized Signatory (iii) Commissioning Certificate for RE Generator, only for issuance for the first month after registration. The application shall be accompanied with the details of payment of the applicable fee & charges towards issuance of certificates as determined by CERC from time to time. While making application for issuance of RECs, the Applicant (Eligible Entity) shall quote the unique Registration Number assigned to it by Central Agency at the time of registration.

...

3.2. Step - 2: After receipt of physical application for issuance of renewable energy certificates from the Eligible Entity, the Central Agency shall undertake a preliminary scrutiny within 6 working days to ensure that the Application Form is complete in all respect along with necessary documents and applicable fees and charges. As part of preliminary scrutiny, the Central Agency shall satisfy that the following conditions are fulfilled by the RE generators or distribution licensee, as the case may be:

a) The application is made in the format specified by the Central Agency from time to time.

b) The status of Accreditation of the Eligible Entity with the State Agency has not expired. The status of Registration of the Eligible Entity with the Central Agency has not expired.

c) The duly certified EIR/ Recommendation of SERC for issuance of RECs is attached for the same period for which application is made towards issuance of Renewable Energy Certificate by the Eligible Entity.

d) The application is accompanied with fees & charges.

... ”

23. Further, Regulation 7(2) of the REC Regulations provides as follows:

“7. Denomination and Issuance of Certificates

...

(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.”

24. The Respondent No.1 has submitted that the aforesaid regulation read with the procedures stipulate a scheme whereby the eligible entity is obligated to follow the steps in the procedures therein and only once the Central Agency is satisfied that the eligible entity has duly complied with the conditions, can it issue the certificates.



25. The Respondent No.1 has submitted that the order of the APTEL dated 28.11.2014 in Appeal Nos. 156 and 248 of 2013, as referred in Para 21 of the Petition, had been stayed by the Hon'ble Supreme Court vide its Order dated 09.07.2015 in Civil Appeal Diary No. 17807 of 2015.

**Submissions in the Rejoinder filed by the Petitioner:**

26. The Petitioner has mainly reiterated the facts mentioned in the Petition. Therefore, the same have not reproduced herewith for the sake of brevity. Additionally, the Petitioner has submitted that the reliance placed by Respondent No. 1 on the Judgment of the Hon'ble Supreme Court in the case of *A.P Power Coordination Committee v Lanco Kondapalli Power Limited* is incorrect. The present Petition has been filed invoking the power of the Commission under Regulation 14 of the REC Regulations, 2010. There is no claim in the present Petition under Section 79 (1) (f). The Judgment of the Hon'ble Supreme Court as referred above specifies that the period of limitation will apply to recovery claims under Section 86 (1) (f) and by extension to Section 79 (1) (f). The provisions of the Limitation Act, 1963 do not apply to the present case.

27. The Petitioner has submitted that the main purpose of the REC Regulations, 2010 is to ensure that only such persons who comply with the substantive Regulations of not taking any concessional benefits should get the RECs. The procedural aspects cannot override this substantive provision of the REC Regulations, 2010. The Petitioner has cited references of the Orders issued by the Commission wherein the aforesaid principle has been upheld in the following cases:

- a. Order dated 02.03.2017 in Petition No. 308/MP/2015 - Nu Power Renewables Private Limited & Anr. v National Load Despatch Centre & Anr.
- b. Order dated 09.11.2017 in Petition No. 141/MP/2017 - Rai Bahadur Seth Shreeram Narsingdas Private Limited v National Load Despatch Centre (NLDC) & Ors.
- c. Order dated 11.02.2019 in Petition No. 22/MP/2019 – M/s. Mirra and Mirra Industries v National Load Despatch Centre & Anr.

### **Analysis and Decision:**

28. The Petition was admitted on 08.01.2019 and was listed for hearing on 16.04.2019 and reserved for orders on 09.07.2019. 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:
29. The Petitioner has developed and commissioned a 24 MW small hydro project located at Village Ghuttu, Tehsil Ghansali, District Tehri Garhwal in the State of Uttarakhand. The details of the project are as under:

<b>Total Installed Capacity (MW)</b>	<b>Certificate</b>	<b>Issue Date</b>	<b>Expiry Date</b>	<b>Certificate No.</b>
<b><u>24 MW</u></b>	Accreditation	08.02.2012	07.02.2017	ULONSBHPPL001A080212
	Registration	28.02.2012	27.02.2017	ULONSBHPPL001R280212

30. The Petitioner has submitted that it had applied for accreditation for the project on 01.03.2011. The project was scheduled to be commissioned by July 2011. However due to delay in construction of power evacuation facilities by transmission licensee in Uttarakhand, the project achieved commercial operation of Unit-1, Unit-II and Unit-III on 23.12.2011, 16.01.2012 and 20.12.2011 respectively. The accreditation was granted on 08.02.2012 and thereafter the project was registered on 28.02.2012. The Petitioner has submitted that it applied for accreditation to UREDA through the online process on 01.03.2011. However, UREDA granted the accreditation to the Project on 08.02.2012, after a delay of more than 11 months from the date of filing of the Application. NLDC registered the project on 28.02.2012. Due to the delay caused by UREDA there was a huge financial loss to the Petitioner on account of non-issuance of the 11195 RECs equivalent to the units generated by the Project since the date of commissioning of the project i.e. 20.12.2011 till 28.02.2012. On 23.02.2012, a representation was filed before UERC for resolution of the issues arising due to delay in accreditation of the project. UERC vide its Order dated 12.06.2012 allowed the representation filed by the Petitioner, and held that the Project is eligible for grant of accreditation by UREDA from the date of the start of generation/commissioning of the

Project i.e. 20.12.2011 and accordingly, directed UREDA for taking necessary action for grant of accreditation from the date of commissioning of the Project. UERC further directed the State Load Dispatch Centre and NLDC for taking on record the revised date of accreditation and to take necessary action to ensure that RECs are issued from the aforesaid date. On 23.06.2012, UREDA communicated the Order dated 12.06.2012 of UERC to NLDC for necessary action. On 25.07.2012, the Petitioner also requested NLDC for taking necessary action in accordance with the Order dated 12.06.2012 passed by UERC. However, NLDC, vide its letter dated 26.07.2012 stated that it has practical difficulties in issuance of the RECs to the Petitioner with retrospective effect. NLDC further stated that the RECs can be granted only after the date of registration of the Project with the Central Agency and not prior thereto. The Petitioner has sent various letters/emails pursuing the matter with NLDC. However, NLDC has failed to issue the RECs in respect of the Project.

31. **Per Contra**, the Respondent No. 1 has submitted that the claim of the Petitioner is barred by Limitation and the RECs can be issued only in compliance to REC Regulations, 2010 and REC Issuance Procedures. Accordingly, the RECs can be issued only from the date of registration or date of commercial operation whichever is later.
32. From the submissions of the parties, the following issues arise before this Commission:-

*Issue No. 1: Whether the claim of the Petitioner for Renewable Energy Certificates in respect of the 24 MW Bhilangana Hydro Electric Project from the date of the commissioning of the Project i.e. 20.12.2011 till the date of registration i.e. 28.02.2012 is time barred under limitation Act, 1963?*

*Issue No. 2: Whether the Petitioner is eligible for Renewable Energy Certificates in respect of the 24 MW Bhilangana Hydro Electric Project from the date of the commissioning of the Project i.e. 20.12.2011 till the date of registration i.e. 28.02.2012?*

33. No other issues were pressed or claimed.
34. We discuss the issues in subsequent paragraphs.

***Issue No. 1: Whether the claim of the Petitioner for Renewable Energy Certificates in respect of the 24 MW Bhilangana Hydro Electric Project from the date of the commissioning of the Project i.e. 20.12.2011 till the date of registration i.e. 28.02.2012 is time barred under limitation Act, 1963?***

35. The Respondent No.1 has submitted that the claim of the Petitioner for issuance of RECs from the date of commissioning of the Project i.e. 20.12.2011 to the date of registration of the project under REC mechanism i.e. 28.02.2012 is barred by limitation. The Order of the UERC was issued on 12.06.2012 following which the NLDC issued its letter dated 26.07.2012 rejecting the Petitioner's claims of issuance of RECs and also stated that the Petitioner should approach the Commission towards seeking any relief in this regard. Further, Regulation 5(4) of the REC Regulations, 2010 provides that any person aggrieved by the order of the Central Agency may appeal before the Commission within 15 (fifteen) days from the date of such order. The Petitioner has not proceeded the Commission as per the REC Regulations, 2010 in this regard, and the present Petition is an attempt to circumvent the applicable period of limitation as specified in the REC Regulations, 2010. Further, the Petitioner has not filed any application for condonation of delay in this regard before the Commission. The Respondent No. 1 has placed its reliance on *A.P Power Coordination Committee v Lanco Kondapalli Power Limited* (hereinafter referred to as 'Lanco case').
36. **Per Contra**, the Petitioner has submitted that the reliance placed by Respondent No. 1 on the Judgment of the Hon'ble Supreme Court in the *Lanco case* is incorrect. The present Petition has been filed invoking the power of the Commission under Regulation 14 of the REC Regulations, 2010. There is no claim in the present Petition under Section 79 (1) (f). The Judgment of the Hon'ble Supreme Court as referred above specifies that the period of limitation will apply to recovery claims under Section 86 (1) (f) and by extension to Section 79 (1) (f). The provisions of the Limitation Act, 1963 do not apply to the present case.
37. We have considered the submission of the Petitioner and NLDC. The Petitioner had applied for accreditation for the Project on 1.3.2011. The Project was scheduled to be commissioned by July, 2011. However, due to delay in construction of power evacuation facilities by transmission licensee, the Project achieved commercial operation for Unit-III on 20.12.2011. The accreditation was granted on 8.2.2012 and thereafter the project was

registered under REC mechanism on 28.2.2012. On 23.2.2012, the Petitioner made a representation before UERC which vide its Order dated 12.6.2012 held that the Project is eligible for grant of accreditation from the date of the start of generation/commissioning of the Project i.e. from 20.12.2011 and accordingly, directed the State Load Dispatch Centre and NLDC for taking on record the revised date of accreditation and to take necessary action to ensure that RECs are issued from the aforesaid date. UREDA vide its letter dated 23.6.2012 addressed to NLDC confirmed that as per the instructions of UERC, the accreditation of the project shall be treated as effective from 20.12.2011 and requested NLDC to take necessary action in this regard. The Petitioner vide its letter dated 25.7.2012, by enclosing the UREDA order dated 23.6.2012 requested NLDC to initiate action for issuance of RECs from the date of start of generation/commissioning of the project. Thereafter, NLDC took up the matter with the Commission vide letter dated 26.7.2012 (copy of the letter enclosed to the Petitioner) stating that considering the application of the Petitioner for retrospective issuance of RECs may open the doors for other RE generators also to claim retrospective issuance of RECs and requested the Commission to provide directions to Central Agency to with the case of the Petitioner. Thereafter, the Petitioner sent reminders to NLDC vide its letters dated 12.5.2014, 25.7.2014, 8.12.2014, 11.2.2015 and 12.5.2015 wherein it highlighted that as per the APTEL's judgment dated 28.11.2014 in Appeal No. 156 and 248 of 2013, RECs have to be issued from the date of commissioning of the RE Project and requested for similar treatment in its case. NLDC in its mail dated 19.5.2015 informed the Petitioner by enclosing a copy of its letter dated 26.7.2012 addressed to CERC and advised the Petitioner to approach the Commission in the matter. The present Petition has been filed on 7.2.2018. The question therefore arises whether the Petition is time barred in view of the objection taken by Respondent No. 1 /NLDC.

38. Hon'ble Supreme Court of India in its judgment in Andhra Pradesh Power Corporation Committee and Ors. Vs Lanco Kondapalli Power Limited and Ors [(2016) 3 SCC 468] has laid down the principles to be adopted by the Electricity Regulatory Commissions to deal with the questions of limitation while dealing with the Petitions filed before it. Relevant part of the order is extracted below:

*“30.....In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Sections 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86 (1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.”*

39. In the light of the above judgment, the Limitation Act shall be applicable with regard to the petitions filed before the Commission. Article 113 of the Limitation Act, 1963 provides as under:-

Description of suit	Period of limitation	Time from which period beings to run
113. Any suit for which no period of limitation is provided elsewhere in this Schedule	Three years	When the right to sue accrues

40. In the present case, the application of the Petitioner dated 25.7.2012 forwarding the revised accreditation letter of UREDA dated 23.6.2012 was not disposed by NLDC. On the other hand, NLDC forwarded the case of the Petitioner and similarly placed persons to the Commission for appropriate directions. NLDC in its mail dated 19.5.2015 informed the Petitioner that RECs cannot be granted under the provisions of the REC Regulations and advised the Petitioner to approach the Commission in this regard. Therefore, the right to sue accrued to the Petitioner with effect from 19.5.2015 when the letter of the Petitioner

was finally replied by NLDC and accordingly, the limitation period is upto 18.5.2018. The present petition has been filed by the Petitioner on 7.2.2018 and accordingly, is within the period of limitation. Therefore, we hold that the petition is not barred by limitation.

***Issue No. 2: Whether the Petitioner is eligible for Renewable Energy Certificates in respect of the 24 MW Bhilangana Hydro Electric Project from the date of the commissioning of the Project i.e. 20.12.2011 till the date of registration i.e. 28.2.2012?***

41. The Petitioner has submitted that it should be granted RECs from the date of commercial operation of its project and in terms of the directions of UERC. The Petitioner has further submitted that the Appellate Tribunal in its order dated 28.11.2014 in Appeal No. 156/2013 (Simran Wind Project Pvt. Ltd. Vs. CERC & Ors.) and in Appeal No. 248/2013 (IL&FS Renewable Energy Ltd. Vs. CERC & Ors.) has held that the fulfilment of the requirement for issue of renewable energy certificate is not from the date of registration but from the date when the generation of electricity commences. The Petitioner has further relied upon the order of the Commission dated 2.3.2017 in Petition No. 308/MP/2005 (Nu Power Renewables Pvt. Ltd. Vs National Load Despatch Centre and Anr.) and Order dated 9.11.2017 in Petition No. 141/MP/2017 (Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd. Vs National Load Despatch Centre) and has contended that the Commission has held in those orders that as long as generations have complied with the substantial provisions of the REC Regulations, they ought to be entitled to receive the RECs and mere procedural delays will not take away this entitlement.
42. Respondent No. 1/ NLDC has submitted that as per Regulation 7(1) of REC Regulations, the eligible entities shall apply to the Central Agency for certificates within three months after the corresponding registration from eligible renewable energy projects. Further, Regulation 7(2) provides that the certificates shall be issued to the eligible entities after the Central Agency duly satisfies itself that all conditions for issuance of certification as may be stipulated in the detailed procedure are complied with by the eligible entity. NLDC has further submitted that the Commission through the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Generation) (Second Amendment) Regulations, 2013 has amended Regulation 10 (1) as under:-



*“(1) After registration, the renewable energy generation plant shall be eligible for issuance of Certificates under these Regulations from the date of commercial operation or from the date of registration of such plant by the Central Agency whichever is later.”*

Accordingly to NLDC, as per the above Regulation where the commercial operation of the concerned project was achieved prior to the date of registration by Central Agency under the REC Regulations, as in the present case, the RECs have to be issued from the date of registration. NLDC has further submitted that the Appellate Tribunal order dated 28.11.2014 in Appeal Nos. 156 and 248 of 2013 have been stayed by the Hon’ble Supreme Court vide order dated 9.7.2015. NLDC has also submitted that the orders of the Commission as referred by the Petitioner are clearly distinguishable from the facts of the present case.

43. We have considered the submissions of the parties. It is noticed that the Petitioner made an application before UREDA on 1.3.2011 for accreditation of 24 MW Bhilangana-III Hydro Electric Project under the RECs scheme with the expected date of commercial operation as April, 2011. However, UREDA issued the accreditation certificate only on 8.2.2012. The third unit of the generating station of the Petitioner was commissioned on 20.12.2011. The Petitioner approached UERC seeking a direction that its project is eligible for accreditation and issuance of RECs from the date of commissioning of the project/start of generation w.e.f. 20.12.2011. UERC after considering the relevant provisions of the UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 came to the following conclusion:

*“14. Based on the above and considering this to be a maiden process under REC mechanism in the State and also in the absence of clear cut guidelines in the form of statutory “Procedures” for application for accreditation in accordance with the RPO Regulations, the Commission allows eligibility of the Project for grant of accreditation under REC Mechanism w.e.f. the date of start of generation/commissioning of the project i.e. 20.12.2011 and accordingly, directs the State Agency (UREDA) for taking necessary action for grant of accreditation from the aforesaid date. The Commission also issues directions to SLDC and NLDC for taking on record the revised date of accreditation and take necessary action to ensure that Renewable Energy Certificates (RECs) are issued from the aforesaid date.”*

The order of UERC mainly pertains to the accreditation of the project of the Petitioner with the State Agency which falls within the jurisdiction of the State Commission. Since accreditation is the basis for registration and further issuance of RECs by NLDC, the State Commission has directed for consequential action by the SLDC and NLDC. The State Agency vide its letter dated 23.6.2012 addressed to NLDC has stated that “as per the instruction of Hon’ble UERC, now the accreditation of the subjected project shall be treated effective from 20.12.2011” and has requested NLDC to take necessary action in this regard. NLDC has refused to prepone the date of registration and issuance of RECs on the basis of date of accreditation as 20.12.2011 on various grounds including that retrospective grant of RECs is not permissible under the REC Regulations. Since the cause of action has arisen on account of the refusal of NLDC to grant RECs on the basis of the revised accreditation, the petition falls within the jurisdiction of this Commission.

44. The Petitioner had made the application for accreditation on 1.3.2011 and under the UERC Regulations, the State Agency has to dispose of the application within a period of 30 days. However, the State Agency has taken almost 11 months for granting accreditation which has delayed the process of registration by NLDC and consequent issue of RECs from the date of commissioning of the generating station. Had the State Agency issued the accreditation in time and enabled the Petitioner to apply for registration to NLDC, its project could have been registered before the date of commissioning on 20.11.2011 and the Petitioner would have been eligible for grant of RECs from that date. Since the date of accreditation has been fixed by UERC as 20.11.2011 after considering the provisions of its Regulations and the facts of the case, the Commission is of the view that the said date of accreditation should be carried to its logical conclusion by granting the registration and issuing the RECs from that date. It is not the case that the Petitioner initiated the process of accreditation after the commissioning of its units and therefore could not be allowed to take advantage of its own wrong. The Petitioner had initiated the action well in advance so that it could get its project registered before the commissioning and become eligible for grant of RECs. In the facts of the present case, the stay of the judgment of the Appellate Tribunal dated 28.11.2014 by the Hon’ble Supreme Court shall not come on the way to grant relief to the Petitioner. Similarly, the amended Regulation 10 (1) of the REC Regulations relied upon by NLDC was issued in the year 2013 and cannot be applied

retrospectively to the disadvantage of the Petitioner for registration and issuance of RECs for the period 20.12.2011 till 28.2.2012.

45. In the light of the above discussion, the Commission is of the view that the promotional provisions of REC Regulations should not be denied to the Petitioner on procedural grounds. The Commission in exercise of its power under Regulation 14 of the REC Regulations directs NLDC to treat the project of the Petitioner as being registered w.e.f. 20.12.2011 and grant RECs to the Petitioner for the generation and injection of RE Power from 20.12.2011 till 28.2.2012.
46. The Petition is disposed of in terms of the above.

**Sd/-**

**आई. एस. झा  
सदस्य**

**Sd/-**

**डॉ एम. के. अय्यर  
सदस्य**

**Sd/-**

**पी. के. पुजारी  
अध्यक्ष**