



नई दिल्ली

NEW DELHI

याचिका संख्या./ Petition No. 357/MP/2022

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 19th of October, 2023

IN THE MATTER OF:

In the matter of application filed for relaxation of time limit and for issuance of Renewable Energy Certificate

AND IN THE MATTER OF:

Leo Fasteners,
Registered Partnership Firm
B-4, Industrial Estate, Thattanchavady,
Pondicherry 605009

...Petitioner

Versus

National Load Despatch Centre (NLDC),
B-9, Qutab Institutional Area, New Delhi

... Respondent

Parties Present: Shri Venkat Shastry Somayajula, Leo Fasteners
Shri Kailash Chand Saini, NLDC
Shri Gajendra Sinh Vasava, NLDC

आदेश/ ORDER

The Petitioner, Leo Fasteners, is a company engaged in wind power generation at Metrathi and Kalugumalai in the State of Tamil Nadu. The Petitioner is seeking condonation of delay in applying for issuance of RECs for the energy injected from December 2020 to August 2021.

2. The Respondent, the National State Load Dispatch Centre (NLDC), is designated as the Central Agency under Regulation 3 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, 2010”) and is entrusted with the functions inter alia of granting registration and issuance of RECs as per the said REC Regulations.

3. The Petition has made the following prayers:

The Hon’ble Commission may be pleased to Condone the delay and relax the time limit stipulated in Regulation 7 of Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 by exercising its power to relax under the said Regulations and further direct the National Load Despatch Centre (NLDC) to issue the Renewable Energy Certificates for the period December 2020 to August 2021 and pass such other order(s) as deemed fit, necessary and appropriate and thus render justice.

Submissions of the Petitioner

4. The Petitioner has submitted as follows:

- (a) The Petitioner had filed a separate Petition No:201/MP/2021 with the Commission during May 2021 for relaxation of the time limit and condoning the delay for the period from November 19 to November 20 from the same project of the Petitioner. Since the Petition was pending with the Commission, the Petitioner was under the impression that “*Application to NLDC for issuance of RECs*” for subsequent periods is also barred.
- (b) Subsequently after the hearing in Petition No 201/MP/2021, the Petitioner wrote to NLDC with the request to accept its applications for issuance of 3958 REC’s for the Period from December’20 to August’ 21 for its Project. But NLDC rejected the applications stating that the applications were made to NLDC beyond the due date. According to the Petitioner, this delay was unintentional since the application was made on 26-03-2022 after completion of the hearing with the Commission on 22-03-2022.
- (c) There was also a delay in obtaining the verified EIR from SLDC, and therefore, it was unable to submit the physical copy of its application to the Respondent (NLDC) due to COVID 19 disruptions.
- (d) The Hon’ble Supreme Court of India, vide its order dated 10.01.2022 in Suo Moto Writ Petition No. 3 of 2020 had clarified that, in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 31.05.2022 shall stand excluded. In the present case, the application was filed on 26.03.2022, which lies within the limitation period prescribed by the Hon’ble Supreme Court.
5. During the course of the hearing on 24.04.2023, the learned counsel for the Petitioner submitted that the delay in applying for the RECs for the aforesaid period was unintentional as the Petitioner’s earlier Petition No. 201/MP/2021 for seeking condonation of delay for the period from November 2019 to November 2020 was already pending before the Commission. The learned counsel for the Respondent submitted that NLDC does not have any objection towards the prayers made by the Petitioner. After hearing the parties, the Commission reserved the Petition for orders.

Analysis and Decision:

6. We have heard the Petitioner and the Respondent and have carefully perused the records.

7. The Petition came up for hearing on 24.04.2023. During the hearing, the Petitioner submitted that the Petition has been filed for seeking condonation of delay and relaxation of the time limit stipulated in Regulation 7 of the REC Regulations, 2010 by exercising the power to relax under the said regulation and for direction to the Respondent, NLDC for issuance of the Renewable Energy Certificates.
8. The representative of the Respondent NLDC submitted that it does not have any objection, and the Commission may pass an Order as deemed fit.
9. The brief facts of the case are that the Petitioner had made a separate Petition No: 201/MP/2021 for relaxation of the time limit and condoning the delay for the period from November 2019 to November 2020. Since the Petition was pending, an application by the Petitioner to the Respondent for the subsequent period was not filed, due to the impression that “*Application to NLDC for issuance of RECs*” for subsequent periods is barred. As submitted by the Petitioner, due to the COVID-19 lockdown, the Petitioner could not complete the process of making necessary application to NLDC for issuance of RECs for the period December 2020 to August 2021 within the stipulated period. As the lockdown was relaxed in a phased manner, the firm operated at less than 25% manpower. The Petitioner further submitted that there was also a delay in obtaining the verified EIR from SLDC and therefore, it was unable to submit the physical copy of its application seeking issuance of RECs to the Respondent.
10. The only issue involved is *whether the delay in application for issuance of RECs for the months of December, 2020 to August, 2021 may be condoned and whether the Respondent may be directed to issue equivalent RECs for the energy injected?*
11. The relevant provisions of the Procedure for Issuance of Renewable Energy Certificates to the Eligible Entity by the Central Agency (REC Issuance Procedures) stipulate as follows:

“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.

3.3. Step - 3: After conducting the preliminary scrutiny, the Central Agency shall intimate in writing to the Applicant for submission of any further information or clarification, if necessary, to further consider the application for issuance of Renewable Energy Certificates or reject the application.

3.4. Step - 4: While considering any application for issuance of Renewable Energy Certificate, the Central Agency shall verify and ascertain availability of following information: a) Verification of the time period for which the Central Agency may have already issued Renewable Energy Certificates to the concerned Eligible Entity. b) Verification of Renewable Energy Certificates claimed by the Eligible Entity from the duly certified Energy Injection Reports by the concerned State Load Despatch Centre in respect of concerned Eligible Entity. c) Details of fee & charges made for issuance of certificates. d) Confirmation of Compliance Auditor report, if any.

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 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.”

12. Further, Regulation 7(2) of the REC Regulations, 2010 provides as under:

“7. Denomination and issuance of Certificates

(1) The eligible entity other than distribution licensee shall apply to the Central Agency for certificates within six months from the 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

(1A) The eligible distribution licensees shall apply to the Central Agency for Certificates within three months from the date of obtaining the certification, as provided in clause (1A) of the Regulation 5, from the concerned Appropriate Commission

(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.”

13. From the above, the Commission observes that as per the mandate of the REC Regulations, 2010 and the REC Issuance Procedures, the eligible entity has to make Web Based Application for issuance of REC as per the details given in the Energy Injection Report and has to also submit the same information in physical form with the Central Agency (NLDC) within six months. The Central Agency has to verify the application in terms of the Energy Injection Reports issued by the concerned SLDC.

14. The Commission observes that the Petitioners have accepted the delay in submitting the application for issuance of RECs for the months of December' 2020 to August' 2021. As submitted by the counsel of the Petitioner, delay was due to restricted physical movement due to COVID-19 Protocol and mis-understanding on the part of the Petitioner in regard to the decision in Petition No. 201/MP/2022 for earlier period. The Respondent, NLDC has stated that it does not have any objection to the Petition filed by the Petitioner and that the Commission may pass an appropriate Order in the matter.

15. In our view, the delay in the application for issuance of REC is procedural in nature due to the reasons stated by the Petitioner and condoning the delay causes no harm to any of the stakeholders, including the Respondent. The main objective of the REC Regulations, 2010 is to promote the generation of renewable energy. We observe that any procedural law cannot put any impediment in achieving the objective of a law.

16. We observe that relevant provisions of *REC Regulations, 2010* stipulate as under:

15. Power to Relax:

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.

17. We observe that relevant provisions of *REC Regulations, 2022* stipulate as under:

18. Power to Relax

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected, may relax any of the provisions of these regulations on its own motion or on an application made before it by interested person(s).

19. Repeal and Savings

(1) Save as otherwise provided in these regulations, the REC Regulations, 2010 and all subsequent amendments thereto and Procedures thereof shall stand repealed from the date of coming into force of these regulations.

(2) Notwithstanding such repeal:

(a) anything done or any action taken or purported to have been done or taken or any accreditation or registration or permission granted or any document or instrument executed or any direction given under the repealed regulations

shall, in so far as it is not inconsistent with the provisions of these regulations, be deemed to have been done or taken under the corresponding provisions of these regulations;

18. From the above we note that the REC Regulations, 2010 have been repealed by the REC, Regulations 2022. By virtue of the saving clause, in terms of Regulations 19 (2) of the REC Regulations 2022, anything done or any action taken under the repealed REC Regulations 2010 shall be deemed to have been done or taken under the REC Regulations, 2022, It is pertinent to note that both the REC Regulations, 2010 and the REC Regulations, 2022 have provisions for the power to relax and Power to give directions.
19. As per the principle laid down for grant of RECs, if the Petitioner is engaged in generation of electricity from renewable energy sources, it shall be eligible for issuance of RECs subject to the eligibility criteria. The main objective of the REC Regulations, 2010 is to promote the generation of renewable energy. Therefore, we are inclined to exercise the “Power to relax” under Regulation 15 of the REC Regulations, 2010 and under Regulation 18 of REC Regulations, 2022 in order to achieve the object of the regulations. Accordingly, we hereby relax Regulation 7(2) of the *REC Regulations, 2010* read with paragraph 4.1 (h) of the REC Procedures to enable issuance of RECs to the Petitioner. As already decided above, the delay in the application for issuance of REC is procedural in nature due to the reasons stated by the Petitioner and condoning the delay causes no harm to any of the stakeholders, including the Respondent.
20. Accordingly, we hereby condone the delay in submitting the application for issuance of RECs. Further, NLDC is directed to issue the RECs after due verification and satisfying itself that the projects meet all conditions and the Petitioners have submitted all required documents for issuance of RECs.
21. The Commission has condoned the delay and relaxed the time limit but in future, the Petitioner should follow the timelines strictly and avoid any delay. It is clarified that compliance with the provisions of the REC Regulations and the Detailed Procedure shall continue to be prerequisites for consideration of the applications for the issue of RECs.

22. The Petition No. 357/MP/2022 is disposed in terms of the above.

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