



नई दिल्ली  
NEW DELHI

याचिका संख्या. /Petition No.: 198/MP/2018

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson  
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member

आदेश दिनांक /Date of Order: 11<sup>th</sup> of February, 2019

**IN THE MATTER OF:**

Petition under Section 61 read with Section 66 of the Electricity Act, 2003 read alongwith Regulation 3, 5, 7, 8, 10, 14 and 15 of the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and Regulation 111 (Inherent Powers) and Regulation 115 (Power To Remove Difficulties) of the CERC (Conduct of Business) Regulations, 1999.

**AND IN THE MATTER OF:**

Petition seeking directions of the Central Electricity Regulatory Commission against BREDA (Bihar Renewable Energy Development Agency) to extend/ revalidate accreditation under 'the Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee, as the case may be, under REC Mechanism.

**AND IN THE MATTER OF:**

Petition seeking directions of the Central Electricity Regulatory Commission against National Load Despatch Centre ('NLDC') /Power System Operation Corporation Ltd. (POSOCO) to extend/revalidate registration under the 'Procedure for Registration of a Renewable Energy Generation or Distribution Licensee, as the case may be, by Central Agency'.

**AND IN THE MATTER OF:**

**HPCL Bio-Fuels Ltd.**

House No. 271, Road No. 3E,  
Post Box. No. 126, (Patna GPO)  
New Pataliputra Colony,  
Patna – 800 013,  
Bihar

**...Petitioner**

VERSUS

**1. National Load Despatch Centre**

Power System Operation Corporation Ltd.,  
B-9, Qutab Institutional Area,  
Katwaria Sarai,  
New Delhi- 110 016

**2. Bihar Renewable Energy Development Agency**

3<sup>rd</sup> Floor, Sone Bhawan Birchand Patel Marg,  
Patna- 800 001,  
Bihar

**...Respondents**

**Parties Present:** Ms. Sakie Jakeria, Advocate, HPCL  
Shri Hardik Luthra, HPCL  
Shri Manoj Kumar Singh, HPCL  
Shri Awanish Anand, HPCL  
Shri Arjun Krishnan Advocate, NLDC  
Shri Ankur Singh, Advocate, NLDC

## आदेश/ ORDER

1. The Petitioner M/s HPCL Biofuels Limited is a wholly owned subsidiary company of HPCL incorporated on 16th October, 2009 for handling the Integrated Sugar Ethanol Co-Gen Plants to be established at Sugauli & Lauriya. The plants have installed capacity of 20 MW (each) of Electricity generation by utilizing bagasse as fuel in the State of Bihar and the generation is tied up for supply to the State Distribution Company under a long term PPA for supply of excess power after internal consumption and is accredited on CPP mode for 5.3 MWH which is the internal consumption. Both the projects were commissioned in December 2011 and are registered under REC mechanism.
2. The Respondent No.1, M/s Power System Operation Corporation Limited (POSOCO) is a Government of India enterprise and it operates as the National Load Despatch Centre (hereinafter referred to as 'NLDC'). NLDC has been designated as the Central Agency.
3. The Respondent No. 2, M/s Bihar Renewable Energy Development Agency (BREDA) is the State Agency for State of Bihar for accreditation and recommending the renewably energy projects for registration and to undertake functions as specified in the Regulation under the 'Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee, as the case may be under REC Mechanism' (hereinafter referred to as "the Accreditation Guidelines").
4. The Petitioner has made the following prayers:
  - i) Clarify and hold that the applications, for both the Projects at Sugauli and Lauriya of the Petitioner, for re-validation, as made by the Petitioner shall be deemed to have been filed within time; and
  - ii) Direct BREDA to accept the application for revalidation and revalidate accreditation of the Petitioner for both the Projects at Sugauli and Lauriya; and
  - iii) Consequentially direct POSOCO to accept application for revalidation and revalidate registration of both the Projects at Sugauli and Lauriya; and

- iv) The Petitioner be also allowed to avail the benefit of REC for the electricity generated / injected in the grid from the date of expiry of accreditation and registration till the final decision in this matter or alternately re-validation of accreditation and consequential revalidation of registration for both the projects at Sugauli and Lauriya and in the future; and
- v) Direct Respondent no. 1 to issue REC certificates pursuant to prayer iv) above; and
- vi) Pass such and further orders as the Commission may deem fit.

**Brief facts of the case:**

- 5. In December 2007, Government of Bihar invited Request for Qualification (herein after referred to as 'RFQ') for 15 closed sugar mills owned by Bihar State Sugarcane Corporation Limited under Ethanol Blending Program.
- 6. M/s HPCL emerged as the highest bidder for two sugar mills - one at Sugauli in East Champaran and another at Lauriya West Champaran Districts.
- 7. On 16.10.2009, M/s HPCL Biofuels Limited (the Petitioner) was incorporated as a wholly owned subsidiary company of HPCL, for handling the Integrated Sugar Ethanol Co-gen Plants at Sugauli & Lauriya.
- 8. On 17.12.2011, Lauriya plant was commissioned.
- 9. On 21.12.2011, Sugauli plant was commissioned.
- 10. On 28.06.2012, the Petitioner applied for accreditation of the both the projects at Sugauli and Lauriya before BREDa in accordance with the provisions of Regulation 3 of the *'Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee, as the case may be under REC Mechanism'* (hereinafter referred to as 'the Accreditation Guidelines') demonstrating its eligibility for such certification.

11. On 7.01.2013, the Respondent No. 2 BREDA accorded it accreditation by issuing 'Certificate of Accreditation' with validity upto 6.01.2018.
12. On 09.01.2013, the Petitioner applied for Registration for both the projects at Sugauli and Lauriya in accordance with the provisions of Regulation 3 of the '*Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency*' (hereinafter referred to as 'Procedure for Registration') being an 'Eligible Entity'.
13. On 08.02.2013, the Respondent No.1 (POSOCO) granted 'Certificate for Registration' as Eligible Entity confirming its entitlement to receive Renewable Energy Certificates for both the RE Generation projects with validity upto 07.02.2018.
14. On 06.11.2017, the Petitioner applied for re-validation of accreditation on-line for both the projects i.e. two months before the expiry of the Accreditations validity, but failed.
15. On 30.01.2018 the Petitioner immediately wrote to BREDA requesting for re-accreditation for both the projects and also sent in a request by a mail dated 30.01.2018 to POSOCO bringing to light the difficulty. In response, POSOCO informed that since the time for application for revalidation or extension of validity of existing accreditation is at least three months in advance prior to expiry of existing Accreditation, the Petitioner may initiate fresh Application for Accreditation and Registration.
16. Hence, the Petition.

**Submissions of the Petitioner:**

17. The Petitioner submitted that in December 2007, Government of Bihar invited Request for Qualification (herein after referred to as 'RFQ') for 15 closed sugar mills owned by Bihar State Sugarcane Corporation Limited under Ethanol Blending Program. M/s HPCL emerged as the highest bidder for two sugar mills - one at Sugauli in East Champaran and another at Lauriya, West Champaran Districts. On 16.10.2009, M/s HPCL Biofuels Limited (the Petitioner) was incorporated as a wholly owned subsidiary company of HPCL, for handling

the Integrated Sugar Ethanol Co-gen Plants at Sugauli & Lauriya which were commissioned on 21.12.2011 & 17.12.2011 respectively. It got both its projects registered under REC Mechanism. Respondent No. 2 accorded 'Certificate of Accreditation' on 07.01.2013 with validity upto 06.01.2018 and Respondent No. 1 granted 'Certificate for Registration' on 08.02.2013 with validity upto 07.02.2018. On 06.11.2017, the Petitioner applied for re-validation of accreditation on-line for both the projects i.e. two months before the expiry of the Accreditation's validity, but failed. On 30.01.2018, it wrote letter to BREDA requesting for re-accreditation for both the projects and also sent in a request by a mail dated 30.01.2018 to POSOCO bringing to light the difficulty. In response, POSOCO informed that since the time for application for revalidation or extension of validity of existing accreditation is at least three months in advance prior to expiry of existing Accreditation, the Petitioner may initiate fresh Application for Accreditation and Registration.

18. The Petitioner has submitted that since the Accreditations for both the projects were expiring on 06.01.2018, it meant that it was required to have applied for Re-validation of accreditation by 06.10.2017. However, due to long period of five years since the first accreditation was obtained in 07.01.2013, by reason of inadvertent error, the Petitioner could not apply for re-validation of accreditation within time i.e. before 06.10.2017.
19. The Petitioner has submitted that power generation based on bagasse is a seasonal activity related to crushing season of sugarcane and generation activity in the financial year only sustains for a period of 5 months beginning November to March. The generation activity for Lauriya plant started on 30.11.2017 and for Sugauli plant from December 2017. It was only around this time that the Petitioner realized that their Accreditation was expiring and the registration was also going to expire. On realizing the inadvertent error at the belated stage, it attempted to initiate revalidation of accreditation application. However after enquiry it was found that application for re-accreditation is only web-based and has to be done online. It made several attempts during this period to initiate re-accreditation online but failed due to the fact that after expiry of the period for application of re-validation of accreditation; the web based application becomes defunct. Similarly the attempt to apply for revalidation of registration could not succeed. It did not receive any communication/ reminder whatsoever

from the Respondents about the impending expiry and the requirement for application for revalidation of accreditation and registration for either of the Projects. The Petitioner sent in a request by an email dated 30.01.2018 to Respondents bringing to light the difficulty they were facing in revalidation of accreditation and consequential revalidation of registration. In response to the email, the Respondent No.1 responded that since the time for application for revalidation or extension of validity of existing accreditation is at least three months in advance prior to expiry of existing Accreditation, the Petitioner should initiate fresh Application for Accreditation and Registration.

20. The Petitioner submitted that any delay in applying for revalidation cannot be fatal as to prevent re-validation of Accreditation and consequential Registration. Further, no notice was ever served upon the Petitioner regarding the unintentional default on its part and as such without any opportunity at all, all doors have been closed to the Petitioner resulting in an outcome which was completely fatal to its viability. This Renewable Energy project was the livelihood of marginal farmers in the neighboring areas of the Projects which are being benefitted by the Project which even otherwise has its own importance and relevance in view of the thrust on Renewable Energy by the Government of India.
21. The Petitioner has submitted that in view of the above and being left with no option, it has approached the Commission for appropriate relief. If revalidation/extension of accreditation and consequential revalidation/ extension of registration is not granted it would suffer additional losses on account of non-issuance of RECs. It has not been able to generate any profit from these projects and is in fact been running in losses since its inception. Failure to recognize the said right of extension of accreditation and registration granted by the Respondents would not only cause losses to it by rendering the projects unviable but also defeat the larger objective and purpose of the policy of Renewable Energy as envisaged under the National Electricity Policy.
22. The Petitioner has submitted that the present petition is a fit case for the Commission to exercise its powers under Regulation 14 and Regulation 15 of REC Regulations, 2010 and deem the application of the Petitioner for revalidation of accreditation and consequential re-

validation of registration to have been made on time, thereby allowing revalidation/extension of accreditation and registration of both the Projects so that it can continue to take the benefit of REC certificates. This will only be in furtherance of the mandate of REC Regulation, 2010 and Renewable Energy Policy.

**Submissions of the Respondent No. 1:**

23. The Respondent No. 1, National Load Despatch Centre has submitted that the present petition is devoid of merit as the Petitioner itself has failed to take necessary action within the stipulated time for re-validation of accreditation and re-validation of registration of the subject project. The non-issuance of RECs for the period from January 2018 onwards is solely due to Petitioner's own default. The Petitioner has failed to revalidate its accreditation / registration before the expiration of the same, and thus defaulted in complying with a mandatory requirement under the REC Regulations and procedures as amended/ revised/ modified by the Commission from time to time.
24. The Respondent No.1 has submitted that the present petition involves adjudication upon a short issue i.e. whether the Petitioner is entitled to revalidation of accreditation and registration of its project after the same has expired and thereafter whether REC can be issued to it for the defaulting period. Hence, a para-wise reply is not required.
25. The Respondent No. 1 has submitted that in exercise of powers conferred under sub-section (I) of Section 178 and Section 66 read with clause (y) of sub-section 2 of Section 178 of the Act, the Commission, brought into force the REC Regulations, 2010. Subsequently, the Commission issued a notification dated 29.01.2010 and designated it as the 'Central Agency' under Regulation 3(1) of the REC Regulations, 2010. It is obligated under Regulation 3(3) of the REC Regulations, 2010 to issue detailed procedures with regards to registration, Model Procedure and issuance of REC certificates, to eligible entities, which in turn is approved by the Commission before coming into force. The relevant procedure was revised by order dated 16.03.2015 of the Commission.



26. The Respondent No. 1 has submitted that neither the REC Regulations, 2010 nor the aforesaid procedure 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 Registration Procedure 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.
27. The Respondent No. 1 has submitted that the REC Registration Procedure prescribes that the entity seeking revalidation **shall** apply for the same at least three months in advance prior to expiry of existing Registration. Further, the answering Respondent is obligated to reject the application for revalidation if the same has been initiated after the expiry of the accreditation certificate. Relevant paragraph of the aforesaid procedure is quoted below: -

#### **4. FUNCTIONS, ROLES AND RESPONSIBILITIES OF ENTITIES INVOLVED**

##### *4.1. Generating Company or Distribution Licensee, as the case may be*

*f. The generating company or Distribution Licensee, as the case may be, shall apply for revalidation or extension of validity of existing Registration at least three months in advance prior to expiry of existing Registration.*

*In case, RE generator has submitted online application for revalidation of Accreditation to State Agency before expiry of the Accreditation Certificate, and during the process of approval by State Agency, Registration Certificate is expired, in such cases, Central Agency will accept the application for revalidation of Registration. Subsequent to re-validation of Registration, the concerned RE Generator will continue to receive RECs without-considering any gap in the process of re-validation of Accreditation/Registration.*

*Further, Central Agency will reject the application of (those RE generators who have not initiated the process of Accreditation/Registration before expiry of the Accreditation Certificate.”*

28. The Respondent No. 1 has submitted that similar procedure is also prescribed for seeking revalidation of accreditation under paragraph “4.1.L” of the '*Model Procedure / Guidelines for Accreditation of Renewable Energy Generation Project or Distribution Licensee, as the case may be, under REC Mechanism by State Agency*' (hereinafter referred to as the

“Accreditation Procedure”). Paragraph 4.1.f. of the REC Registration Procedure uses the word “shall” which generally denotes that a provision is imperative in nature and must be strictly complied with.

29. The Respondent No. 1 has submitted that it is an admitted fact that the Petitioner has failed to comply with the abovementioned mandatory requirements as it has failed to initiate the re-validation process before the expiry of Accreditation certificate, which expired on 06.01.2018. The application process for re-validation of accreditation and registration is through a web-based link which automatically expires as soon as the prescribed last date for such an application elapse.
30. The Respondent No. 1 has submitted that the Petitioner has itself admitted to the fact that it did not undertake revalidation of its project within the time period specified in the procedures. Hence, it has in compliance with the REC Regulation Procedure disallowed the Petitioner's request for initiating the process of revalidation of accreditation & registration beyond the expiry of their accreditation certificate.
31. The Respondent No. 1 has placed its reliance on the judgment of the Hon'ble Supreme Court in *Ramchandra Keshav Adke v. Govind Joli Chavare*, (1975) I SCC 559 in which it acknowledges the age old fundamental principle of law i.e., when a statute provides for a thing to be done in a particular manner it must be done in that way or not at all. Relevant paragraphs of the aforesaid judgment are extracted below: -

*“24. Next point to be considered is, what is the consequence of noncompliance with this mandatory procedure?”*

*25. A century ago, in Taylor v. Taylor Jassel, M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thins must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor and later by this Court in several cases, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other," ...*

32. The Respondent No. 1 has submitted that the Petitioner has categorically admitted that there was a delay on its part in revalidating its project. Hence, the Petitioner ought not be allowed to take advantage of its own wrong and the Petition may be dismissed.

**Submissions of the Respondent No. 2:**

33. The Respondent No. 2 has submitted that the application process for re-validation of accreditation and registration is through a web-based link which is handled by the concerned department and automatically expires as soon as the prescribed last date for such an application elapse.

**Analysis and Decision:**

34. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.
35. The brief facts of the case are that Government of Bihar invited Request for Qualification for 15 closed sugar mills owned by Bihar State Sugarcane Corporation Limited under Ethanol Blending Program. M/s HPCL emerged as the highest bidder for two sugar mills - one at Sugauli and another at Lauriya in Champaran Districts. On 16.10.2009, the Petitioner was incorporated as a wholly owned subsidiary company of HPCL, for handling the Integrated Sugar Ethanol Co-gen Plants at Sugauli & Lauriya which were commissioned on 21.12.2011 & 17.12.2011 respectively. Both the projects were registered under REC Mechanism. Respondent No. 2 accorded 'Certificate of Accreditation' on 07.01.2013 with validity upto 06.01.2018 and Respondent No. 1 granted 'Certificate for Registration' on 08.02.2013 with validity upto 07.02.2018. On 06.11.2017 the Petitioner applied for re-validation of accreditation on-line for both the projects i.e. two months before the expiry of the Accreditations validity, but failed. On 30.01.2018, it wrote letter to BREDA requesting for re-accreditation for both the projects and also sent in a request by a mail dated 30.01.2018 to POSOCO bringing to light the difficulty. In response POSOCO informed that since the time for application for revalidation or extension of validity of existing accreditation is at least three months in advance prior to expiry of existing Accreditation, the Petitioner may initiate

fresh Application for Accreditation and Registration. The Petitioner has submitted that since the Accreditations for both the projects were expiring on 06.01.2018 it meant that it was required to have applied for Re-validation of accreditation by 06.10.2017. However, due to long period of five years since the first accreditation that was obtained in 07.01.2013, by reason of inadvertent error, the Petitioner could not apply for re-validation of accreditation within time i.e. before 06.11.2017.

36. The Petitioner has submitted that the present petition is a fit case for the Commission to exercise its powers under Regulation 14 and Regulation 15 of REC Regulations, 2010 and deem the application of the Petitioner for revalidation of accreditation and consequential re-validation of registration to have been made on time, thereby allowing revalidation/extension of accreditation and registration of both the Projects so that it can continue to take the benefit of REC certificates.
37. Per contra, the Respondent No. 1 (NLDC) has submitted that the present petition is devoid of merit as the Petitioner itself has failed to take necessary action within the stipulated time for re-validation of accreditation and re-validation of registration of the subject project. The non-issuance of RECs for the period from January 2018 onwards is solely due to Petitioner's own default. The Petitioner has failed to revalidate its accreditation / registration before the expiration of the same, and thus defaulted in complying with a mandatory requirement under the REC Regulations, 2010 and REC Registration procedures as amended/ revised/ modified by the Commission from time to time. The Respondent No. 2 (BREDA) has submitted that the application process for re-validation of accreditation and registration is through a web-based link which is handled by the concerned department and automatically expires as soon as the prescribed last date for such an application elapse.
38. From the submissions of the parties, the following issues arise before this Commission:
39. *Issue No 1: Whether the Petitioner has filed the applications for re-validation of accreditation for the Projects at Sugauli and Lauriya within time?*

40. ***Issue No 2: Whether the Petitioner is entitled to avail the benefit of REC for the electricity generated/ injected in the grid from the date of expiry of accreditation and registration till the final decision in this matter or alternately re-validation of accreditation and consequential revalidation of registration for both the projects at Sugauli and Lauriya and issuance of RECs from January, 2018 till the final decision in this matter?***
41. No other issues were pressed or claimed.
42. We discuss the issues one by one:
43. ***Issue No 1: Whether the Petitioner has filed the applications for re-validation of accreditation for the Projects at Sugauli and Lauriya within time?***
44. The Petitioner has submitted that Co-gen Plants at Sugauli & Lauriya were registered under REC Mechanism. ‘Certificate of Accreditation’ was accorded for the projects on 07.01.2013 with validity upto 06.01.2018. On 06.11.2017 it applied for re-validation of accreditation on-line for both the projects i.e. two months before the expiring of the Accreditations validity, but failed. On 30.01.2018 it wrote letter to BREDA requesting for re-accreditation for both the projects and also sent in a request by a mail dated 30.01.2018 to POSOCO bringing to light the difficulty. In response POSOCO informed that since the time for application for revalidation or extension of validity of existing accreditation is at least three months in advance prior to expiry of existing Accreditation, the Petitioner may initiate fresh Application for Accreditation and Registration. The Petitioner has prayed that the Commission may exercise its powers under Regulation 14 and Regulation 15 of REC Regulations, 2010 and deem the application of the Petitioner for revalidation of accreditation and consequential revalidation of registration to have been made on time, thereby allowing revalidation/extension of accreditation and registration of both the Projects so that it can continue to take the benefit of REC certificate. Per contra, the Respondents have submitted that the Petitioner has failed to revalidate its accreditation / registration before the expiration of the same, and thus defaulted in complying with a mandatory requirement under the REC Regulations, 2010 and REC Registration procedures as amended/ revised/ modified by the Commission from time to time. The application process for re-validation of accreditation and registration is through a

web-based link which is handled by the concerned department and automatically expires as soon as the prescribed last date for such an application elapse.

45. The Commission observes that Para 4.1(i) of the *Model Guidelines For Accreditation of a Renewable Energy Generation Project or Distribution Licensee*, as the case may be under REC Mechanism, stipulates that :

*“The Generating Company or Distribution Licensee, as the case may be, shall apply through REC web application for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation.”*

46. Para 4.1(f) of the *‘Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency’* which reads as follows :

*“The generating company or Distribution Licensee, as the case may be, shall apply for revalidation or extension of validity of existing Registration at least three months in advance prior to expiry of existing Registration.*

*In case, RE generator has submitted online application for revalidation of Accreditation to State Agency before expiry of the Accreditation Certificate, and during the process of approval by State Agency, Registration Certificate is expired, in such cases, Central Agency will accept the application for revalidation of Registration. Subsequent to re-validation of Registration, the concerned RE Generator will continue to receive RECs without considering any gap in the process of re-validation of Accreditation/Registration*

*Further, Central Agency will reject the application of those RE generators who have not initiated the process of Accreditation/Registration before expiry of the Accreditation Certificate.”*

47. Relevant Provisions of *Procedure for Issuance of Renewable Energy Certificates to the Eligible Entity by Central Agency* 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.

...”

48. Regulation 7(2) of the *Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010* 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.”

49. Clause 2.1 of the ‘Detailed Procedure’ provides as under:

*This procedure shall be applicable to RE projects, who have received "Certificate of Registration" from the Central Agency, and shall be eligible to avail Renewable Energy Certificates from the date of commercial operation or from the 00:00 hrs of next day of Registration date of such plant by the Central Agency whichever is later.*

From the above, the Commission observes that the eligible entity shall apply through REC web application for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation. In case, RE generator has submitted online application before expiry of the Accreditation Certificate and during the process of approval by State Agency, Registration Certificate gets expired, in such cases, Central Agency will accept the application for revalidation of Registration. Subsequent to revalidation of Registration, the concerned RE Generator will continue to receive RECs without considering any gap in the process of re-validation of Accreditation/Registration. Further, Central Agency will reject the application of those RE generators who have not initiated the process of Accreditation/Registration before expiry of the Accreditation Certificate. The Central Agency shall duly satisfy itself that all the conditions for issuance of Certificates as stipulated in the detailed procedure are complied with by the eligible entity and then certificate shall be issued to the eligible entity. The entity shall be eligible to avail Renewable Energy Certificates from the date of commercial operation or from the 00:00 hrs of next day of Registration date of such plant by the Central Agency whichever is later.

50. The Commission observes that in the instant case, the 'Certificates of Accreditation' for both of the projects of the Petitioners were valid upto 06.01.2018. Therefore, the Petitioner was required to apply for Re-validation of accreditation by 06.10.2017. However, the Petitioner could not apply for re-validation of accreditation within time and claimed to have applied for the same on 06.11.2017 i.e. about two month in advance prior to expiry of existing Accreditation through REC web application. But according to Petitioner the application window of the website crashed. On 30.01.2018, it wrote letter to Respondent No.2 requesting for re-accreditation for both the projects and also sent in a request by a mail dated 30.01.2018 to POSOCO bringing to light the difficulty. The Commission observes that it is an admitted fact that the Petitioner has not initiated the process of revalidation of reaccreditation of the project under REC mechanism three months before as stipulated under Para 4.1(i) of the



*Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee.*

51. We are in agreement with the contention of NLDC. The Petitioner was required to submit the application for issuance of RECs in terms of Regulation 7 of the REC Regulations, 2010 and Detailed Procedure made thereunder. However, the Petitioner did not comply with the provisions of the REC Regulations, 2010 and Detailed Procedure. During the course of hearing, learned counsel for the Petitioner tendered un-conditional apology for not initiating the process of revalidation of reaccreditation of the project under REC mechanism prior to three months before as stipulated under Para 4.1(i) of the *Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee*. The Petitioner has accepted its mistake regarding non-initiation of the application within time. Learned counsel further submitted that this error was procedural in nature and the application was punched within the time stipulated and was within limitation. The representative of NLDC agreed that the Petitioner is entitled to RECs. However, the same was denied on account of procedural and technical issues for which Respondent has no power/authority to condone the same and that it could be done by the Commission. In the circumstances explained above, the Commission feels necessary to condone the procedural delay by the Petitioner in applying for revalidation for accreditation.
52. The Commission observes that 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 dealing in 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. Further, the main objective of REC Regulations is to promote the generation of renewable energy and as there was generation of renewable energy for the period mentioned above, RECs need to be issued from January, 2018. Accordingly, we direct Respondents to process the case of the petitioner for grant of RECs w.e.f. 07<sup>th</sup> January, 2018 onwards till the period the Petitioner got the accreditation/registration revalidated under REC mechanism as per REC Regulations. We also take serious note of the lack of diligent adherence to procedures by the petitioner and

administer a strong warning to the petitioner to be careful in future and comply with the provisions of the REC Regulations, 2010 in letter and spirit. This should not become a precedent to be quoted in future in case of non-compliance of the provisions of the REC Regulations, 2010.

53. *Issue No 2: Whether the Petitioner is entitled to avail the benefit of REC for the electricity generated/ injected in the grid from the date of expiry of accreditation and registration till the final decision in this matter or alternately re-validation of accreditation and consequential revalidation of registration for both the projects at Sugauli and Lauriya and issuance of RECs from January, 2018 till the final decision in this matter?*
54. In the light of discussion held in Issue No. 1 above, the Commission holds that M/s HPCL Bio-Fuels Ltd. (the Petitioner) is entitled to RECs from 07<sup>th</sup> January, 2018 onwards as per terms and conditions of The Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and the Respondents are directed accordingly.
55. Accordingly, the Petition No. 198/MP/2018 is disposed of.

Sd/-  
डॉ एम के अय्यर  
सदस्य

Sd/-  
श्री पी के पुजारी  
अध्यक्ष