



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 321/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: 09th of January, 2024

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act 2003 read with Regulations 14 & 15 of the Central Electricity Regulatory Commission (Terms and Conditions of Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

AND IN THE MATTER OF:

Shri Suryakant Gupta
Proprietor M/s Rajaram Maize Products Solar Power Division,
Through General Power of Attorney Holder Mr. Manoj Choubey,
Village Indawani, District Rajnandgaon,
Chhattisgarh - 491441.

...Petitioner

Versus

National Load Dispatch Centre
Grid Controller of India

(Formerly Power System Operation Corporation Ltd.)

B-9 (1st Floor), Qutab Institutional Area,

Katwaria Sarai, New Delhi -110016.

...Respondent

Parties Present: Shri Arjun Aggarwal, Advocate for the Petitioner

Shri Pradeep Aggarwal, Advocate for Petitioner

Shri Kailash Chand Saini, NLDC

Shri Gajendra Sinh Vasava, NLDC

Shri Alok Mishra, NLDC

आदेश/ ORDER

The Petitioner, Shri Suryakant Gupta, is the sole proprietor of M/s Rajaram Maize Products Solar Division. The Petitioner is engaged in the generation of renewable energy and owns and operates a 4.8 MW Solar Power Plant at Village Indawani, District Rajnandgaon, Chhattisgarh. The project is under captive use and was set up under the Chhattisgarh State Solar Energy (CSSE) Policy 2012. This petition has been purported to be filed under Section 79 of the Electricity Act 2003 read with Regulation 14 & Regulation 15 of the *Central Electricity Regulatory Commission (Terms and Conditions of Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010* (REC Regulations) seeking re-accreditation and issuance of Renewable Energy Certificates (RECs).

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

- (a) direct the Respondent to grant certificate of re-accreditation for RE-Generating Station to the Petitioner from 18.5.2021.*
- (b) direct the Respondent to issue the Renewable Energy Certificates for energy generated from 18.5.2021 onwards.*
- (c) direct the Respondent to pay costs of the instant Petition;*
- (d) pass any other or further order(s) as the Commission may deem fit and proper in facts and circumstances of the present case.*

Submissions of the Petitioner:

4. The Petitioner had submitted as under:

- a) The Petitioner owns and operates a 4.8 MW Solar Power Plant on 23 acres of land at Village Indawani, District Rajnandgaon, Chhattisgarh. The Project is under captive use and was set up under the Chhattisgarh State Solar Energy (CSSE) Policy 2012. The said Solar Power Plant is the first captive use solar power plant, which is installed in Chhattisgarh under the CSSE Policy. The Chhattisgarh State Renewable Energy Development Agency ('CREDA') issued a No Objection dated 17.08.2015 to the Petitioner wherein it is stated that the said solar power plant will be for captive use. The Petitioner started generation from the project of solar power on 23.01.2016. The project was issued an accreditation certificate by CREDA for the period from 18.05.2016 to 17.05.2021. The project was registered for RECs with effect from 29.06.2016.
- b) Pursuant to the orders dated 03.03.2017 passed by the Chhattisgarh State Electricity Regulatory Commission (CSERC), the Respondent stopped giving REC benefits to the Petitioner on the grounds that the captive generation plants would be eligible for registration with the Central Agency under the REC scheme if registered on or before 30.06.2016.
- c) Being aggrieved, the Petitioner filed a Petition No. 449/MP/2019 under Section 79 of the Electricity Act, 2003 before this Commission in October 2019, inter-alia, praying that the Respondent be directed to issue the RECs for the energy generated as per the prevalent policy. The Commission, vide its order dated 17.01.2022, allowed Petition No. 449/MP/2019 filed by the Petitioner and held that the Petitioner is eligible for the issuance of RECs as a captive generating plant from its date of commissioning. i.e. 23.01.2016.

- d) After a delay of six (6) months from the date of Application, CREDA instead of issuing a Certificate of Re-accreditation from 17.05.2021, issued a fresh Certificate of Accreditation for the generating station on 11.02.2022 with effect from 11.02.2022 to 10.02.2032 to the Petitioner. This was intimated by CREDA to the Respondent vide letter dated 11.02.2022. Although the letter dated 11.02.2022 of CREDA records that the Certificate of Re-accreditation was issued to the Petitioner, however, the Certificate enclosed with the said letter was a fresh certificate/ accreditation for the RE generating station.
- e) The Petitioner, vide its letter dated 12.02.2022, informed the Respondent (NLDC) that the project had been successfully re-accredited and the project may be registered under the REC mechanism
- f) The Respondent, vide its email dated 23.02.2022, stated that the Petitioner's Application for re-accreditation was under process. The Respondent, vide its email dated 28.3.2022, sought clarification from the Petitioner to clarify whether the registration under the REC mechanism was for a new project or it was for the same project which had expired. The Petitioner, vide its letter dated 29.03.2022, clarified that the project was the same old project and there was no Power Purchase Agreement to a third party.
- g) The Petitioner, thereafter, wrote letters to the Respondent on 27.04.2022 and 18.05.2022 requesting to grant re-registration under the REC mechanism, but the Respondent did not reply.
- h) The Petitioner received an email dated 08.07.2022 from the Respondent informing that the Petitioner did not pray for an extension of the validity of Accreditation and Registration, and as such the validity of accreditation and registration was not extended by the Commission vide its Order dated 17.01.2022.
- i) The Respondent raised issues which were already decided by the Commission by order dated 17.01.2022 that the registration of the Petitioner under REC mechanism is treated as expired from 29.06.2021 onwards, and as per the provisions of the REC Regulations, the project opting for self-consumption is not eligible for Registration under the REC mechanism beyond 30.06.2016.
- j) The Petitioner vide letter dated 19.07.2022 clarified to the Respondent that the accreditation of the Petitioner expired on 17.05.2021 and registration expired on 29.06.2021. The Petitioner filed Petition No. 449/MP/2019 before the Commission on

7.10.2019. The pleadings were complete much prior to the expiration of the registration of Petitioner. However, as no grounds were raised in the petition regarding the expiration, the Commission could not have decided on this issue to the absence of relevant pleadings and prayers. The Petitioner applied for re-accreditation before CREDA on 04.08.2021 i.e. after the expiration of accreditation and registration of the project on 17.05.2021 and 28.06.2021 respectively. The delay in applying for re-accreditation was due to severe COVID restrictions. CREDA allowed re-accreditation after a period of six (6) months from submitting the Application. The Hon'ble Supreme Court, vide its order dated 27.04.2021 in Suo Motu Writ (Civil) 3 of 2022 extended the period of limitation under all general and special laws. The Petitioner was registered with the Respondent on 29.06.2016 prior to 30.06.2016, the date for registration under the REC mechanism. Further, the Commission vide its order in Petition No. 449/MP/219 dated 17.01.2022 already held that the Petitioner is eligible for the issuance of RECs as a captive generating plant from its date of commissioning i.e. 23.01.2016.

Hearing dated 19.07.2023:

5. As per the Record of Proceedings dated 19.07.2023, it was held as under:

Learned counsel for the Petitioner submitted that the present Petition has been filed, inter-alia, seeking direction upon the Respondent to grant the reaccreditation of the Renewable Energy Generating Station to the Petitioner from 18.5.2021 and the issuance of Renewable Energy Certificates (RECs) for energy generated from 18.5.2021 onwards. Learned counsel submitted that the Commission, vide its order dated 17.1.2022 in Petition No. 449/MP/2019 filed by the Petitioner has already held that the Petitioner is eligible for the issuance of RECs as a captive generating plant from its date of commissioning.

2. The representative of the Respondent, NLDC, submitted that the Respondent has no objection to the present Petition. The representative of NLDC, however, pointed out that the Petitioner's accreditation expired on 17.5.2021 whereas its registration also expired on 29.6.2021 and the Petitioner had not prayed for the extension of their validity.

3. In response, learned counsel for the Petitioner submitted that he would seek instruction in this regard.

4. Considering the submissions made by the learned counsel for the Petitioner and the representative of the Respondent, the Commission directed the Petitioner to clarify on an affidavit within a week the issue pointed out by the representative of the Respondent, NLDC, with a copy to the NLDC who may file its response thereon within a week thereafter.

5. Subject to the above, the Commission reserved the matter for order

Submission by the Petitioner on an affidavit dated 28.07.2023:

6. The Petitioner vide additional affidavit has submitted as under:
 - a) In response to the Respondent's inquiry about the Petitioner not seeking an extension of the validity of their accreditation certificate, the Petitioner stated in an affidavit that they had already included their request in prayer clause (a) of the current petition and sought directions that the Commission be pleased to grant certificate of re-accreditation to the Petitioner from 18.05.2021 onwards as the Certificate issued by the CREDA had expired on 17.05.2021.
 - b) The Petitioner has neither requested for issuance of a fresh Certificate of Accreditation nor sought implementation of the fresh certificate of Accreditation issued by the CREDA on 11.02.2022.

Analysis and Decision:

7. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.
8. From the submissions above, we note that only the following issue arises for adjudication:

Whether the Petitioner's RE Project is eligible for Re-Registration as a captive generating plant, and Whether the Respondent can be directed for issuance of the Renewable Energy from 18.5.2021 onwards?
9. We observe that the Commission vide Order dated 17.01.2022 in Petition No. 449/MP/2022 in a case titled *Shri Suryakant Gupta, Proprietor M/s Rajaram Maize Products Solar Power Division, Through General Power of Attorney Holder Mr Manoj Choubey Versus NLDC* has held as under:

18. From the above, the Commission observes that vide Order dated 20.07.2016 CSERC has already held that the petitioner has the right of captive use of electricity generation from the Solar Power Plant set up by the Petitioner for its own starch plant and the Petitioner shall have the right to get all those facilities for its project which are available to the electricity producers from the renewable power sources and the captive users according to the regulations. Also, it is observed that Petition No. 61/2016(M) was filed with CSERC under section 142 of the Electricity Act 2003 against respondents CSPDCL. Vide Order dated 03.03.2017, CSERC held that the petitioner's project being solar power plant cannot generate power during evening and night hours. Therefore, during the night hours and evening hours the power at user end has to meet from retail supply by the licensee. Accordingly, the provisions of DSM Regulations (ABT Regulations) have to be relaxed for this peculiar case. It was

also held that the Petitioner will have to enter into the PPA with CSPDCL for sale of the surplus solar energy available after meeting its captive requirement and banking will be available for the entire year however energy settlement is to be carried out on month to month basis. The Petitioner would use the wires of licensee in the day hours only for meeting its captive use/end use requirement and the same wires would be utilized for availing retail supply during evening and night hours. Also vide another Order dated 14.11.2017, CSERC has held that the cause of action for the relaxed provisions of the regulations/orders will be from the date of Order in Petition No. 61/2016(M) viz. 03.03.2017.

19. From that above, **the Commission is of the view that the captive status of the Petitioner already stands adjudicated by CSERC vide Order dated 20.07.2016 whereas vide Order dated 03.03.2017, CSERC has given a few relaxations to the Petitioners and vide Order dated 14.11.2017 CSERC have held that the relaxations were to be implemented from 03.03.2017.**

20. **The Commission further observes that on 17.08.2015 CREDA issued 'No objection certificate' that the power produced from the project shall be for captive usage and for the third party sale. Further, vide letter dated 12.02.2016 issued by the Petitioner to CREDA, the Petitioner had annexed undertaking regarding captive use of generating energy.**

21. The Commission observes that NLDC has pointed out that the Petitioner on 30.06.2016 had indicated in the checklist the off-take route of electricity for the project as APPC and in the declaration of August 2016 the Petitioner had indicated the off-take route of electricity for the project as open access. The Commission notes that when the Petitioner was litigating its case about captive status before CSERC, it should have informed the same to the Respondent NLDC as it had done to the State Nodal Agency viz., the CREDA. It is definitely a procedural lapse on the part of the Petitioner. However, the Commission is inclined to condone this procedural lapse in view of the Order dated 20.07.2016 of CSERC vide which the captive status of the Petitioner stands adjudicated. Further, it is observed that in the letter dated 06.06.2018, CREDA has recommended to NLDC to change the status of the project of the Petitioner to captive plant for eligibility of REC from the date of COD i.e. 23.01.2016.

22. From the discussion above, **the Commission observes that the Petitioner faced procedural difficulties as a result of the CSPDCL not granting open access to the Petitioner for transfer of power from its captive plant to the point of consumption, despite repeated orders by the CSERC. Therefore, the Commission is of the view that the Petitioner cannot be denied RECs on account of the delay in recognizing the captive status of the Petitioner. NLDC during the hearing stated that it would have no objection should the Commission direct the registration of the Petitioner and its entitlement for RECs. The main objective of the REC Regulations, 2010 is to promote the generation of renewable energy. Considering that registration is only a procedural condition and the fact that the substantive conditions have been fulfilled by the Petitioner as per the Order of CSERC and certification of CREDA the State Nodal Agency, the Commission holds that the Petitioner is eligible under REC Regulations for issuance of RECs as captive generating plant from its date of**

commissioning i.e. 23.01.2016.

23. *The issue is decided accordingly.*

Issue No.2: Whether the Respondent should be directed to issue RECs to the Petitioner for the month of April 2017 and for the months from November 2018 to May 2019 and onwards?

24. In light of the discussions held in Issue No.1 above, the Commission holds that the Petitioner is entitled to RECs for the month of April 2017 and for the months of November 2018 to May 2019 as per the terms and conditions of REC Regulations, 2010. Accordingly, we direct the Respondent to process the case of the Petitioner for the grant of RECs after due verification and fulfilment of other conditions for the issuance of RECs as per REC Regulations.

25. Accordingly, the Petition No. 449/MP/2019 is disposed of in terms of the above.

10. From the above, we note that vide Order dated 17.01.2022, the Commission has already held that the Petitioner is entitled to RECs for the month of April 2017 and from the month of November 2018 to May 2019 as per the terms and conditions of REC Regulations, 2010. Accordingly, NLDC was directed to process the case of the Petitioner for the grant of RECs after due verification and fulfilment of other conditions for issuance of RECs as per REC Regulations.
11. In the instant petition, we observe that the project was issued an accreditation for the period from 18.05.2016 to 17.05.2021 and was registered for the period from 29.06.2016 to 28.06.2021. The accreditation and registration of the project expired on 17.05.2021 and 28.06.2021 respectively, and due to COVID-19 restrictions, the Petitioner could not apply for re-accreditation within the stipulated time period as per the REC Procedures. The Petitioner could submit documents to CREDA for re-accreditation on 04.08.2021. Further, CREDA issued a fresh Accreditation from 11.02.2022 to 10.02.2032 to the Petitioner instead of issuing a Certificate of Re-accreditation from 17.05.2021. When the Petitioner approached the Central Agency with new accreditation, the Respondent, after seeking some clarifications from the Petitioner, denied the re-registration citing that the registration of the Petitioner under the REC mechanism is treated as expired from 29.06.2021 onwards and that as per the provisions of the REC Regulation 2010 the captive project is not eligible for Registration beyond 30.06.2016.

12. 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.**” (emphasis added)*

13. The Commission observes that 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 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 revalidation 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.” (emphasis added)

14. From the above, the Commission observes that an eligible entity is required to apply through the REC web application for revalidation or extension of validity of existing accreditation at least three months in advance prior to the expiry of existing Accreditation. In case the RE generator submitted an online application before the expiry of the accreditation certificate and during the process of approval by the State Agency, the registration certificate expires; in such cases, the 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, the Central Agency will reject the application of those RE generators who have not initiated the process of accreditation/registration before the expiry of the accreditation certificate.

15. In this instant petition, the Commission observes that the Petitioner could not apply for revalidation of accreditation as per the timeline stipulated in the REC Procedures due to COVID restrictions as claimed by the Petitioner. The Petitioner could only apply after the expiry of its accreditation due to which the State Nodal Agency issued fresh accreditation to the Petitioner's same project.
16. During the hearing held on 19.07.2023, NLDC has specifically conveyed that NLDC has *no objection* to the present Petition. However, the Petitioner's accreditation expired on 17.05.2021 whereas its registration also expired on 29.06.2021, and that the Petitioner had not prayed for the extension of their validity. The Petitioner submitted that vide instant petition, it had already sought directions to grant a certificate of re-accreditation for the RE-Generating Station to the Petitioner from 18.05.2021 onwards.
17. The Commission is of the view that it is a case of delay in revalidation of accreditation and registration, which is purely procedural in nature and a procedural law may not be an impediment in achieving the real object of the law. The Commission observes that the main objective of REC Regulations 2010 is to promote the generation of renewable energy. In the circumstances explained above, the Commission feels it is equitable to condone the procedural delay on the part of the Petitioner in applying for revalidation of accreditation and registration.
18. Further, the Commission vide its Order dated 17.01.2022 in Petition No 449/MP/2019 has made the Petitioner's solar project eligible under the REC Mechanism for the issuance of RECs as per captive generating plant from its date of commissioning i.e. 23.01.2016 and has directed the respondent to issue RECs to the Petitioner for the month of April 2017 and from the month of November 2018 to May 2019.
19. In our view, the delay in the application for issuance of REC is procedural in nature due to the reasons stated by the Petitioners and is not likely to prejudice any of the stakeholders, including the Respondent. We are of the view that the Petitioner's case for re-accreditation

and re-registration under the REC Regulations merits consideration.

20. We also observe that NLDC has acted in accordance with the existing Regulatory framework and does not have any power to relax any provision of the REC Regulation or REC Registration procedures.

21. We observe that the relevant provisions of the REC Regulations, 2010 stipulate as under:

14. Power to give directions: *The Commission may from time to time issue such directions and orders as considered appropriate for the implementation of these regulations and for the development of market in power for Renewable Energy Sources.*

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.*

22. The 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

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.

23. 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 Regulation 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 also 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”.

24. The main objective of the REC Regulations, 2010 and REC Regulations, 2022 is to promote

the generation of renewable energy. Therefore, we are inclined to exercise the “Power to relax” Regulation 15 of REC Regulations, 2010 and Regulation 18 of REC Regulations, 2022, in order to achieve the object of the regulations. Accordingly, the Commission holds that the Petitioner’s Project is eligible for re-accreditation and re-registration under REC Regulations from 18.05.2021.

25. Accordingly, we hereby relax Regulation 7(2) of the REC Regulations, 2010, read with paragraph 4.1 (h) of the REC Procedures and Regulation 10(3) of the REC Regulations 2022 to enable the issuance of RECs to the Petitioner from 18.05.2021 onwards. Further, NLDC is directed to issue the RECs after due verification and fulfilment of other conditions for issuance of RECs as per REC Regulations.

26. The Petition No. 321/MP/2022 is disposed of in terms of the above.

Sd/-
(पी. के. सिंह)
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(अरुण गोयल)
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(आई. एस. झा)
सदस्य

Sd/-
(जिष्णु बरुआ)
अध्यक्ष