



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.: 426/MP/2019

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्रीआई. एस. झा, सदस्य/ Shri I.S. Jha, Member
श्रीअरुण गोयल, सदस्य/ Shri Arun Goyal, Member

आदेश दिनांक/ Date of Order: 06th of August, 2020

IN THE MATTER OF:

Petition under Section 66 & 79 of the Electricity Act, 2003 read with Regulations 14 & 15 CERC (Terms and Conditions for recognition & issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 for issuance of directions to the Respondents to effect re-accreditation and registration of the Petitioner under the Renewable Energy Certificates (REC) mechanism and grant/issue the RECs.

ANDIN THE MATTER:

Yadu Sugar Limited
202/47, Thapar Arcade,
KaluSarai, HauzKhas
New Delhi - 110016

...Petitioner

VERSUS

1. National Load Despatch Centre
Power System Operation Corporation Ltd.
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110016
2. Uttar Pradesh New Renewable Development Agency

Vibhuti Khand, Gomti Nagar,
Lucknow, Uttar Pradesh
Pin Code: 226010

...Respondents

Parties Present: Ms. Swapna Sheshadri, Advocate, YSL
Shri Ashok Rajan, NLDC
Shri Kailash Saini, NLDC

आदेश/ORDER

The Petitioner, M/s Yadu Sugar Limited has set up a bio-fuel based co-generation power plant in Badaun district, Uttar Pradesh with a total installed capacity of 32 MW and has registered 7 MW under Renewable Energy Certificates (REC) mechanism. The Petitioner has filed the instant Petition under Sections 66 and 79 of the Electricity Act, 2003 read with Regulations 14 and 15 of the CERC (Terms and Conditions for recognition & issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as the "REC Regulations, 2010") for issuance of directions to the Respondents to effect re-accreditation and registration of the Petitioner under the REC mechanism.

2. The Respondent No. 1, National Load Despatch Centre (NLDC) has been designated as the Central Agency for REC mechanism, in pursuance of the provisions of the REC Regulations, 2010. NLDC is entrusted with registration of eligible renewable energy generators, issuance of RECs, maintenance and settlement of REC accounts, repository of transactions in REC, and such other functions incidental to implementation of REC mechanism as may be assigned by the Commission from time to time.
3. The Respondent No. 2, Uttar Pradesh New Renewable Development Agency (UPNEDA) is the State Nodal Agency for implementation of various schemes in the State of Uttar Pradesh including REC mechanism.
4. The Petitioner has made the following prayers:

(a) Admit the Petition;

- (b) *Set aside the communication dated 19.09.2019 of the UPNEDA and the Email dated 13.09.2019 issued by the NLDC;*
- (c) *Direct the UPNEDA to grant re-accreditation to the plant of the Appellant with immediate effect;*
- (d) *Direct NLDC to take necessary action to allow re-registration of the Petitioner's plant;*
- (e) *If there is a time lag, direct NLDC to issue the RECs to the Petitioner;*
- (f) *Pass such other further order(s) as the Commission may deem just and proper;*

Submissions of the Petitioner

5. The Petitioner has submitted that it has setup a bio-fuel based co-generation power plant with capacity of 32 MW out of which 7 MW is registered under the REC mechanism. The plant is situated at Ranet Churaha, Village – Sujapur, District Badaun, Uttar Pradesh and has crushing capacity of 5000 tonnes of cane per day (TCD). The commissioning date of Unit – 1 of the Petitioner's power plant was 30.03.2012.
6. The Petitioner's project is accredited under REC Mechanism vide certificate no. UPONSYADSL001A030414 dated 03.04.2014 which was valid up to 02.04.2019. The project was registered under the REC mechanism vide registration no. UPONSYADSL001R031214 dated 03.12.2014 which was valid up to 02.12.2019.
7. The Petitioner has submitted that since the registration was valid till 02.12.2019, they presumed that the accreditation was also valid till the said date and accordingly had also deposited an amount of Rs. 1 Lakh to Uttar Pradesh Transmission Corporation Limited (SLDC) on 02.02.2019. The details of the payment were informed to SLDC through letter dated 20.04.2019.
8. The Petitioner has submitted that through letter dated 20.04.2019, the annual accreditation fees of Rs. 11,800/- (DD No. 1986 drawn on Punjab National Bank, Bisauli) for FY 2019-20 was submitted to UPNEDA. While, UPNEDA accepted this letter including the fees, the Petitioner was orally informed that the accreditation of the plant had expired on 02.04.2019. Thereafter, the Petitioner on 24.04.2019, handed over a written application to UPNEDA for re-accreditation. However, the Senior Project Officer of UPNEDA advised the Petitioner to

make a formal renewal application on the letter head of the Petitioner.

9. The Petitioner has submitted that on 26.04.2019, it submitted a formal written application on its letter head to the Senior Project Officer of UPNEDA. However, the Senior Project Officer refused to accept the application stating that the online portal where the renewal applications are filed is now closed for the Petitioner as the accreditation had expired. The Petitioner then wrote a detailed letter dated 03.09.2019 to UPNEDA with regard to the above situation for allowing Petitioner to file the renewal application. UPNEDA vide letter dated 19.09.2019 rejected the request for re-accreditation and directed the Petitioner to approach NLDC for this matter.
10. The Petitioner has submitted that it sent a letter to NLDC on 12.09.2019 explaining the whole issue and requested NLDC to direct UPNEDA to renew the accreditation of the Petitioner's plant. NLDC in its reply vide email dated 13.09.2019, declined the request citing that a proper online application was not made by the Petitioner.
11. The Petitioner has submitted that its bonafide is also clear from the fact that it had paid the annual accreditation fees of Rs. 11,800/- to UPNEDA for FY 2019-20 and also paid the fees of Rs. 1,00,000/- to SLDC on 02.02.2019. While UPNEDA accepted the fees and so did SLDC, they have rejected re-accreditation of the project under REC Mechanism on mere procedural grounds, which ought not be encouraged.
12. The Petitioner has submitted that it has always acted in compliance with the directions issued by NLDC, UPNEDA and SLDC with regard to the regulations of the REC mechanism. Therefore, substantive rights of the Petitioner with regard to the reaccreditation should not be prejudiced merely because of procedural delay. Further, the Petitioner ought not to be left devoid of the benefit of REC on technical grounds as the Petitioner will be in an extremely difficult position as until the re-accreditation is allowed, the Petitioner would not be able to apply for re-registration which was to expire on 02.12.2019.
13. The Petitioner submitted that the crushing season was to commence from last week of November 2019 and if the re- accreditation is not granted, the Petitioner would not be able to commence the operation of the said power plant. This will result in significant financial losses to the Petitioner.

14. The Petitioner has submitted that the Commission in its various orders has held that the requirement of compliance of procedural formalities and processes have to be interpreted in a manner to facilitate the achievement of primary objective of promoting renewable energy generation and not to defeat the same. In this regard, the Petitioner has placed its reliance on Commission`s Order dated 11.02.2019 in Petition No. 22/MP/2019 (*Mirra and Mirra Industries v. NLDC and Anr.*), Order dated 11.02.2019 in Petition No. 129/MP/2018 (*Shalimar Visuals Pvt. Ltd. V. NLDC and Anr.*), Order dated 02.03.2017 in Petition No. 308/MP/2015 (*NuPower Renewables Pvt. Ltd. and Anr. v. NLDC and Anr.*) and the judgment of Appellate Tribunal for Electricity dated 28.11.2014 in Appeal Nos. 156 of 2013 and 248 of 2013 (*Simran Wind Power Pvt. Ltd. and Ors. v. CERC and Anr.*).

Analysis and Decision

15. The Petition was admitted on 17.12.2019 and the matter came up for hearing on 18.06.2020 and thereafter, the petition was reserved for orders. On 18.06.2020, the Petitioner submitted that the petition was filed, inter-alia, seeking direction to the Respondent No.2 (UPNEDA) to grant re-accreditation to the Petitioner`s plant with immediate effect and to the Respondent No.1 (NLDC) to issue RECs. The representative of the Respondent No. 1, NLDC submitted that in terms of Clause 4.1(i) of the Procedure for Accreditation of RE Generation Project by State Agency and Clause 4.1(f) of the Procedure for Registration of RE Generation Project by the Central Agency, the generating company is required to apply for revalidation/ extension of the validity of existing accreditation/ registration, at least three months prior to expiry of existing accreditation/ registration. However, the Petitioner had failed to apply for revalidation of accreditation on REC portal within the stipulated timeframe and had approached NLDC belatedly. However, NLDC does not have power to condone such delay. Further, since no allegations have been levelled against NLDC, it would not be filing any reply.

16. The Petitioner has set up a 32 MW bio-fuel based co-generation power plant, out of which 7 MW capacity has been registered under REC Mechanism. On 03.04.2014, UPNEDA granted certificate of accreditation for the Petitioner's plant, which was valid for a period of 5 years i.e. till 02.04.2019. NLDC granted registration under REC mechanism on 03.12.2014 which was valid till 02.12.2019. The Petitioner has submitted that as the registration under REC

mechanism was valid till 02.12.2019, it presumed that the accreditation was also valid till such date.

17. The Petitioner has submitted that it deposited Rs. 1,00,000/- with SLDC towards annual fee on 02.02.2019. The Petitioner also deposited Rs.11,800 on 20.4.2019 with UPNEDA towards annual accreditation fee for the financial year 2019-20. The payments were duly accepted by UPSLDC and UPNEDA.
18. However, UPNEDA orally informed the Petitioner that its accreditation had expired on 02.04.2019. Therefore, on 24.4.2019, the Petitioner submitted a written application to UPNEDA for grant of reaccreditation. However, UPNEDA advised the Petitioner to make a formal renewal application. On 26.04.2019, the Petitioner submitted a formal written application to UPNEDA but the same was rejected by UPNEDA since the online portal where the renewal applications are filed was closed for the Petitioner because the accreditation of the Petitioner's project had already expired.
19. The Petitioner has submitted that vide its letter dated 03.09.2019, it again requested UPNEDA to permit it to file its renewal application. In response, UPNEDA, vide its letter dated 19.09.2019, rejected the Petitioner's request for re-accreditation and directed the Petitioner to approach NLDC. The Petitioner, vide its letter dated 12.09.2019, requested NLDC to facilitate renewal of accreditation of the Petitioner's Plant. However, NLDC, vide its email dated 13.09.2019, declined the request on the ground that a proper online application was not made by the Petitioner.
20. During the hearing held on 18.06.2020, the representative of NLDC submitted that the Petitioner has failed to apply for revalidation of accreditation on REC portal within the stipulated timeframe and had approached NLDC belatedly. Further, NLDC did not have powers to condone such delay.
21. The Commission observes that Para 4.1(i) and 4.2(b) 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*" (In short, 'Model REC Accreditation Procedures'), stipulates as under:

"4.1(i) 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.”

“4.2.State Agency

b.State Agency shall submit one time information in the prescribed format to Central Agency to obtain login credentials in the REC Web application. Any change in the information shall immediately be intimated to the Central Agency.”

22. 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* (in short, ‘REC Registration Procedures’) 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.”

23. From the above, the Commission observes that the application process for revalidation of accreditation and registration is through a web-based link provided by the Central Agency. The Central Agency provides the login to the RE generators. An eligible entity is required to apply through this REC web application at least three months in advance prior to expiry of existing accreditation. In case the RE generator has submitted online application before expiry of the accreditation certificate and during the process of approval by State Agency, registration certificate expires, in such cases, the Central Agency accepts the application for revalidation of registration. Subsequent to revalidation of registration, the concerned RE generator continues to receive RECs without any gap in the process of re-validation of accreditation/ registration. Further, for those RE generators who have not initiated the process of accreditation/ registration before expiry of the accreditation certificate, the Central Agency rejects the application.

24. In the instant petition, the Commission observes that the Petitioner was required to apply for

revalidation of accreditation by 02.01.2019 (three months prior to date of expiry of accreditation i.e. 02.04.2019) but the petitioner had not done so. The Petitioner has also admitted that there was delay in filing application for re-accreditation to Respondent 2 (UPNEDA). Hence, the Petitioner has failed to comply with the Model REC Accreditation Procedures and REC Registration Procedures. The application process for re-validation of accreditation and registration is through a web-based link provided by NLDC and the link automatically expires as soon as the prescribed last date for such an application lapses.

25. The Commission notes that during the course of hearing, the Petitioner has accepted its mistake regarding non-initiation of the application within time for the process of revalidation of accreditation of the project under REC mechanism as stipulated under Para 4.1(i) of the Model REC Accreditation Procedures. However, the Petitioner submitted that this error was procedural in nature and requested to condone the delay.
26. We are in agreement with the contention of NLDC. The Petitioner was required to submit the application in terms of the REC Regulations, 2010 and Model REC Accreditation Procedures and REC Registration Procedures made thereunder. However, the Petitioner failed to apply for revalidation of accreditation and registration within the timeline specified in the above-mentioned Procedures.
27. The Commission is of the view that it is a case of delay in application for revalidation of accreditation and registration which is purely procedural in nature. Furthermore, the Commission observes that the Petitioner had deposited Rs. 1,00,000/- with SLDC towards annual fee on 02.02.2019 and also deposited Rs.11,800/- to UPNEDA towards annual accreditation fee for the financial year 2019-20 on 20.04.2019, which was duly accepted by UPNEDA even after the expiry of the accreditation of the project on 02.04.2019.
28. Further, the Commission notes that the main objective of REC Regulations is to promote the generation of renewable energy and there was generation of renewable energy by the Petitioner.
29. In view of the above facts, the Commission is of the view that the procedural delay on the part of the Petitioner deserves to be condoned. Accordingly, the Commission directs the Petitioner to approach the State Agency for reaccreditation. Upon the petitioner producing the certificate of re-accreditation, the Central Agency is directed to re-register the Petitioner

and issue RECs on verification of fulfillment of other conditions for issuance of REC as per REC Regulations, 2010.

30. Accordingly, Petition No 426/MP/2019 stands disposed of.

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