



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 204/MP/2018

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member
श्री आई. एस. झा, सदस्य/ Sh. I.S. Jha, Member

आदेश दिनांक /Date of Order: 23rd of April, 2019

IN THE MATTER OF:

Petition for directions to the Respondents, National Load Despatch Centre and Tamil Nadu Transmission Corporation Limited - State Nodal Agency for the revalidation of accreditation and registration of the Petitioner under the Renewable Energy Certificates (REC) mechanism and consequent reliefs.

AND IN THE MATTER OF:

Eingur Wind Energy Private Limited
25 Pari Nagar Erode
Tamil Nadu - 638001

...Petitioner

VERSUS

- 1. National Load Despatch Centre**
Power System Operation Corporation Limited

B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110016

2. Tamil Nadu Transmission Corporation Limited

Superintending Engineer (State Nodal Officer)
Load Despatch & Grid Operation
(State Nodal Agency for REC mechanism)
TANTRANSCO, 144, Anna Salai,
Chennai – 600002

...Respondents

Parties Present: Ms. Swapna Seshadri, Advocate for EWEPL
Shri Ashwin Ramanathan, Advocate for EWEPL
Shri Arjun Krishnan, Advocate, NLDC
Shri Sumit Srivastava, Advocate, NLDC
Shri Ashok Rajan, NLDC

आदेश/ ORDER

1. The Petitioner, Eingur Wind Energy Private Limited, is a generating company who has installed a wind based Renewable Energy Generating station at SF No. 482/1A (P) Thiruvambalapuram Village, Radhapuram Taluk Tamil Nadu with an installed capacity of 1.5 MW under REC mechanism. The Petitioner was accredited and registered as an Eligible Entity under the provisions of the Central Electricity Regulatory Commission (Terms And Conditions For Recognition And Issuance Of Renewable Energy Certificate For Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as “REC Regulations”) for issuance of RECs with effect from 05.01.2012. The Petitioner is seeking condonation of delay of 72 days in applying for such revalidation of accreditation by the Petitioner under the Regulations of this Commission and consequential reliefs.
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 Tamil Nadu Transmission Corporation Limited is the State Agency for State of Tamil Nadu for accreditation and recommending the renewably energy projects for registration and to undertake functions as specified in the REC Regulations.
4. The Petitioner has made the following prayers:
 - a) *Hold that the Petitioner is entitled to revalidation of accreditation of the Petitioner's projects with effect from 17/12/2016 and revalidation of registration with effect from 05/01/2017 under the REC Regulations and the procedures laid down thereunder;*
 - b) *Condone the procedural delay if any of the Petitioner in the process for reaccreditation and re-validation;*
 - c) *Direct the Respondent to take necessary action for revalidation of accreditation of the Petitioner's projects with effect from 17/12/2016 and revalidation of registration with effect from 05/01/2017 under the REC Regulations and the procedures laid down thereunder;*
 - d) *Direct the Respondents to issue RECs corresponding to the generation of electricity by the Petitioner for the period from 17/12/2016 onwards;*
 - e) *Pass such other further order(s) as the Commission may deem just in the facts and circumstances of the present case.*

Brief facts of the case:

5. On 17.12.2011, the Petitioner was granted "Certificate of Accreditation" with validity upto 16.12.2016 by Respondent No. 2.
6. On 05.01.2012, the Respondent No.1 granted the Petitioner "Certificate for Registration" as Eligible Entity confirming its entitlement to receive Renewable Energy Certificates for its project with validity upto 04.01.2017.
7. On 26.11.2016, the Petitioner received an e-mail from the Respondent No. 2 for re-validation of the accreditation, with instructions for revalidation. However, the e-mail was missed by the Petitioner.

8. On 28.02.2017, the Petitioner applied for re-validation of accreditation on-line for its project i.e. after expiry of the Accreditations validity i.e. 16.12.2016. The Petitioner also sought to pay the fees online for the revalidation of the accreditation. However the online gateway did not accept the payment.
9. The accreditation and registration of the project expired without revalidation. Hence, the Petition.

Submissions of the Petitioner:

10. The Petitioner has submitted that it was granted 'Certificate of Accreditation' by Respondent No. 2 vide certificate dated 17.12.2011 with validity upto 16.12.2016. The Respondent No. 1 granted the 'Certificate of Registration' to the Petitioner vide certificate dated 05.01.2012 with validity upto 04.01.2017. It was receiving the RECs under REC mechanism for the electricity generated from the generating station since 05.01.2012.
11. The Petitioner has submitted that on 26.11.2016, it received an e-mail from the Respondent No. 2 for re-validation of the accreditation and with instructions for revalidation. Since, the earlier registration process was in the year 2012 and was valid at one stretch for 5 years many of its officers had changed and the routine compliances with regard to RECs were on the certified generation being submitted on a monthly basis. The re-validation was not on short-periodic basis and its officers were not expecting the email on the re-validation process and in such circumstances coupled with the fact that certain staff of the Petitioner were on leave, the email dated 26.11.2016 was missed by its office. This was also the first time the revalidation was being done after the registration and such omission was an honest mistake on part of the Petitioner. It is in these circumstances, which are due to bona fide reasons, the email on the re-validation of accreditation dated 26.11.2016 was missed and also it could not complete the process of re-validation of the accreditation before 16.12.2016.
12. The Petitioner has submitted that on 28.02.2017 when in normal routine it approached Respondent No. 2, via email, for issuance of the RECs from 17.02.2017 it came to its notice that the registration under REC mechanism has expired. It sought to pay the fees online for the revalidation of the accreditation. However the online gateway did not accept the payment.

It requested them to unlock the payment gateway for payment of the fees for revalidation of the accreditation by the Petitioner. However, there was no response from the Respondents with regard to the above e-mail dated 28.02.2017.

13. The Petitioner has submitted that in the circumstances explained above it has been left without accreditation and consequently the registration also expired without revalidation. The entire process has occurred due to the only reason of not revalidating the accreditation prior to its expiry and as such the delay of 72 days has occurred.
14. The Petitioner has submitted that the revalidation of the accreditation and registration process is only a procedural requirement and procedural compliances are to be undertaken for such revalidation. There are no other substantial conditions to be fulfilled. Therefore, the non-revalidation prior to expiry of the accreditation ought not to prejudice the petitioner with regard to the substantive rights and that too for the life of the projects. The process to be undertaken online is the payment of fees, whereas certain procedural documents are to be submitted to the Respondent No. 2 for the revalidation of the accreditation. The entire issue has arisen only because the fees of Rs. 17,250/- was not being accepted online after 16.12.2016.
15. The Petitioner has submitted that although the Petitioner had, due to a genuine mistake and for bona fide reasons missed due communication dated 26.11.2016, the said communication did not specify that the process had to necessarily be completed prior to 16.12.2016 and that the revalidation of the accreditation could not be undertaken thereafter.
16. The Petitioner has submitted that the procedures laid down under the REC Regulations enable the revalidation of the accreditation in advance. In this regard, Clause 4.1(i) 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' provides as under:

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

17. The Petitioner has submitted that the above procedure is in the form of guidelines for implementation of the REC Regulations. The guidelines cannot and do not prescribe any substantive conditions to be fulfilled or provide for any substantive rights to the parties. This is evident from Clause 1.2 which reads as under:

“1.2. This procedure is prepared in order to implement the CERC REC Regulations exercising its powers conferred under sub-section (1) of Section 178 and Section 66 read with clause (y) of sub-section (2) of Section 178 of the Electricity Act, 2003 and all other powers enabling it in this behalf, to facilitate development of market in power from renewable energy sources by issuance of ‘Renewable Energy Certificates (REC)’.”

18. The Petitioner has submitted that as recognised in the above guidelines itself, the purpose is to facilitate development of the market from Renewable Energy sources. The objective is also recognised by the Commission in the Statement of Objects and Reasons issued at the time of framing of the REC Regulations, wherein the Commission has held as under:

“1. Introduction

1.1 The Electricity Act, 2003 entrusts on the appropriate commission the responsibility of promotion of co-generation and generation based on renewable energy sources. The policy framework of the Government of India also stresses on the encouragement of renewable energy sources keeping in view the need for energy security of the country.

.....
3.1.2 The Commission has carefully considered these comments and would like to reiterate that the framework of renewable energy certificate (REC) is meant to facilitate and promote the development of market in electricity based on renewable energy sources and as such the Commission is well within its jurisdiction to specify regulations in this regard under Sections 66 of the Act. This also goes with the vision enshrined in the Preamble to the Act – the vision of “promoting efficient and environmentally benign policies”. Development of market with suitable mechanism for promotion of renewable energy sources is essential to facilitate the new investment in this vital segment of the electricity sector. The constraints in development of market in electricity based on renewable energy sources have been explained in detail in para 1.6. The Commission would like to underscore that the framework of REC would help overcome these constraints and facilitate harnessing of renewable sources in the locations where there is potential for such sources of energy. This will at the same time also enable the obligated entities in other places to meet their renewable purchase obligation. The Commission would also like to emphasize that the Act and the policies envisage coordinated efforts of CERC and SERCs in promotion of renewables in the country. The SERCs have specific responsibility under section 86(1)(e) of the Act and the Forum of Regulators (FOR) has already evolved a model regulation to be framed by the SERCs under the said

provision to facilitate inter alia implementation of the REC framework. The need for regulations by CERC was also felt by the FOR to facilitate the dealing of REC at national level as part of the market based instrument for promotion of renewable energy in the country. The scheme envisages inter alia central level registry, dealing of certificates in the platforms of power exchange which can be facilitated only through a regulation by the Central Commission.”

19. The Petitioner has submitted that the Commission as well as the Hon'ble Appellate Tribunal in various decisions have reiterated the primary objective of the Electricity Act, 2003 for promoting and facilitating Renewable Energy generation in the country. This is the substantive goal to be achieved. It has also been held that procedural formalities and processes have to be interpreted and applied in a manner to facilitate the achievement of the primary objective of promoting renewable energy generation and not to defeat the same. The Petitioner has placed its reliance on the case of *Nu Power Renewables Private Limited & Anr v. National Load Despatch Centre & Anr*, Petition No. 308.MP.2015 dated 02.03.2017 and the case of *Simran Wind Power Private Limited & Ors v Central Electricity Regulatory Commission & Anr*, Appeal No. 156 of 2013 and 248 of 2013 dated 28.11.2014.
20. The Petitioner has submitted that it is incorrect on the part of the Respondent No. 1 to read an absolute prohibition into the procedures laid down under the REC Regulations that there can be no revalidation of the accreditation after the expiry. Reading such an absolute prohibition would not only be contrary to the provisions of the Procedure laid down, but also contrary to the very objective sought to be achieved.
21. The Petitioner has submitted that non-grant of revalidation of the accreditation to the petitioner in the present case would cause irreparable loss and injury to the petitioner for the life of the power project. The power project was established and investments made on the basis of the legal position then existing that RECs would be available for captive use of electricity. The Commission has also been extremely careful in amending the legal position for non-grant of RECs for captive power plants only for future power plants to be established and not for the power plants who were already registered under the REC mechanism. In the circumstances, it would be extremely unjust and unfair to deny the benefits of RECs to the power project for the life of the power project for the only reason that the revalidation of the accreditation was delayed by a period of about 72 days from the expiry of the accreditation.

To impose this condition would be contrary to the basic scheme, objective and rational of the Electricity Act, 2003 and the RECs regulations framed and notified thereunder.

22. The Petitioner has submitted that procedural law and procedural aspects are meant to be subservient to the substantive law and cannot take away the rights of the parties under the substantive law. The Petitioner has placed its reliance on the decision of the Hon'ble Supreme Court in the case of *Saiyad Mohammad baker El-Edross v Abdulhabib Hasan Arab* (1998) 4 SCC 343, wherein it has been held as under:

“8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.”

23. The Petitioner has submitted that the power to revalidate the accreditation is granted to the Respondent No. 2. The power being granted without any express prohibition that it cannot be exercised after the expiry of the accreditation, the said power can be exercised at any time as occasion arises. This would be also by application of the principles contained in Section 14 of the General Clauses Act, 1897. The refusal of the Respondents to grant revalidation of the accreditation upon expiry of the accreditation and as a consequence, the expiry of the registration of the Petitioner under the REC mechanism is erroneous.

24. The Petitioner has submitted that even if such a prohibition as contended by the Respondents is to be assumed or read into the procedures so as to place a restriction on revalidation post expiry of the accreditation, the Commission under the REC Regulations has sufficient powers to relax such a condition in the interest of the renewable energy generator. In this regard, Regulation 14 and 15 are relevant and read 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.”

25. The Petitioner has submitted that it has supplied renewable energy in compliance with the conditions applicable for issuance of RECs. The only difficulty which arose was on account of the delay of 72 days in the revalidation of the accreditation. The Petitioner ought not to suffer for the life of the project as a consequence. Vested rights of the Petitioner by account of fulfilment of the substantive conditions under the REC Regulations being fulfilled all through ought not to be prejudiced or denied to the Petitioner on account of the delay of about 72 days in the procedural formality of revalidation of the accreditation and consequent inability to revalidate the registration.
26. The Petitioner has submitted that Respondents may be directed for revalidation of the accreditation and consequently the revalidation of the registration of the project under the REC mechanism.

Submissions of the Respondent No. 1:

27. The Respondent 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 claimed period 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 this Commission from time to time.
28. The Respondent 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. A para-wise reply is not required.
29. The Respondent has submitted that in exercise of powers conferred under sub-section (1) 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. Subsequently, the Commission

issued a notification dated 29.01.2010, and designated the answering Respondent as the ‘Central Agency’ under Regulation 3(1) of the REC Regulations. The answering Respondent is obligated under Regulation 3(3) of the REC Regulations, to issue detailed procedures with regards to registration, accreditation and issuance of REC certificates, to eligible entities which in turn are approved by the Commission before coming into force. The relevant procedure i.e. ‘*Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency*’, (hereinafter referred to as “REC Registration Procedure”) was revised by order dated 16.03.2018 of the Commission.

30. The Respondent has submitted that neither the REC Regulations 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 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.
31. The Respondent has submitted that in the above context, it is relevant to mention 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.”

32. The Respondent has submitted that similar procedure is also prescribed for seeking revalidation of accreditation under paragraph “4.1.i.” 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”). The Respondent has submitted that 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.
33. The Respondent 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 16.12.2016. 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.
34. The Respondent has submitted that the judgement of the full bench of the Hon’ble Supreme Court in *Ramchandra Keshav Adke v. Govind Joti Chavare*, (1975) 1 SCC 559; is relevant for the present case as 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 judgement are extracted below: -

“24. Next point to be considered is; what is the consequence of non-compliance 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 thing 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.”

35. The Respondent has submitted that as the Petitioner did not undertake to revalidate its accreditation/registration within the mandated period, the answering Respondent having no discretionary power or authority under the REC Regulations or the REC Registration Procedure cannot process their applications at a later stage. The Petitioner has entirely failed to explain the casual and belated approach in presenting the case before the Commission, even as per its own case as they were aware of the default as far back as February 2017. Ignorance of law cannot be used as a ground for non-compliance with a mandatory procedure. Such conducts are seriously hindering and adversely impacting the proper functioning and discharge of obligations by the answering Respondent, as mandated under the REC Regulations or the REC Registration Procedure issued by the Commission.
36. The Respondent has submitted that in light of the above facts and circumstances the present petition may be dismissed.

Submissions of the Petitioner through Rejoinder:

37. The Petitioner has reiterated the submissions already made in the plaint as such the same are not being reproduced here for the sake of brevity. Additionally, the Petitioner has submitted that NLDC’s allegation that the Petitioner has admitted that it is in default of the REC Regulations, is wrong and denied. Secondly, the REC Regulations do not stipulate the time period of 3 months for applying for re-validation of accreditation and registration. The Model Guidelines do not specify that in the event the application for revalidation is not made at least 3 months prior to expiry, the party will not be eligible to get the re-accreditation or re-validation.
38. The Petitioner has submitted that the contention of NLDC can be tested by asking NLDC to produce the data of all persons who apply for re-accreditation or re-validation of RECs to the NLDC. Is it that the NLDC processes only such cases in which the generators apply atleast 3

months prior to the expiry of their registration? On the contrary, the fact is that NLDC processes several cases even if the 3 months timeline is not adhered to. Therefore, there is no merit in the argument of NLDC.

39. The Petitioner has submitted that the main purpose of the REC Regulations is to ensure that only such persons who comply with the substantive Regulations of not taking any concessional benefits should get the REC. The procedural aspects cannot override this substantive provision of the REC Regulations. The Petitioner has placed its reliance on the Order dated 02.03.2017 in Petition No. 308/MP/2015 in the case of *Nu Power Renewables Private Limited & Anr. v National Load Despatch Centre & Anr.*, and in the Order dated 09.11.2017 in Petition No. 141/MP/2017 in the case of *Rai Bahadur Seth Shreeram Narsingdas Private Limited b National Load Despatch Centre (NLDC) & Ors.*
40. The Petitioner has submitted that Respondent has wrongly relied on the judgment of the Hon'ble Supreme Court in the case of *Ramchandra Keshav Adke v Govind Joti Chavare(1975) 1 SCC 559*. The REC Regulations do not provide for any such mandatory procedure.

Analysis and decision:

41. We have heard the learned counsels for the Review Petitioner and the Respondent and have carefully perused the records.
42. The brief facts of the case are that the Petitioner, Eingur Wind Energy Private Limited, is a generating company who has installed a wind based Renewable Energy Generating station in the State of Tamil Nadu with an installed capacity of 1.5 MW under REC mechanism. The Petitioner was accredited and registered as an Eligible Entity under the provisions of the REC Regulations for issuance of RECs. The Petitioner was granted 'Certificate of Accreditation' by Respondent No. 2 vide certificate dated 17.12.2011 with validity upto 16.12.2016. The Respondent No. 1 granted the 'Certificate of Registration' to the Petitioner vide certificate dated 05.01.2012 with validity upto 04.01.2017. The Petitioner has been receiving the RECs for the electricity generated since 05.01.2012. On 26.11.2016, the Petitioner received an e-mail from the Respondent No. 2 for re-validation of the accreditation and with instructions

for revalidation. The Petitioner has stated that since the initial registration process was in the year 2012 and was valid at one stretch for 5 years many of officers of the Petitioners had changed and the routine compliances with regard to RECs were on the certified generation and being submitted on a monthly basis. The re-validation was not on short-periodic basis and the officers of the Petitioners were not expecting the email on the re-validation process and in such circumstances coupled with the fact of certain staff of the Petitioner were on leave the email dated 26.11.2016 was missed by the office of the Petitioner. This was also the first time the revalidation was being done after the registration and as per the Petitioner such omission was an honest mistake on its part. The Petitioner has claimed that it was in these circumstances, which are due to bona fide reasons, that the Petitioner could not complete the process of re-validation of the accreditation before 16.12.2016.

43. The Petitioner has submitted that on 28.02.2017 when in normal routine it approached Respondent No. 2, via email, for issuance of the RECs from 17.02.2017 it came to its notice that the registration under REC mechanism has expired. It sought to pay the fees online for the revalidation of the accreditation. However, the online gateway did not accept the payment. It requested them to unlock the payment gateway for payment of the fees for revalidation of the accreditation by the Petitioner. However, there was no response from the Respondents with regard to the above e-mail dated 28.02.2017. The Petitioner has submitted that in the circumstances explained above it has been left without accreditation and consequently the registration also expired without revalidation. The entire process has occurred due to the only reason of not revalidating the accreditation prior to its expiry and as such the delay of 72 days that has occurred. The Petitioner has submitted that the revalidation of the accreditation and registration process is only a procedural requirement and procedural compliances are to be undertaken for such revalidation. There are no other substantial conditions to be fulfilled. Therefore, the non-revalidation prior to expiry of the accreditation ought not to prejudice the petitioner with regard to the substantive rights and that too for the life of the projects. The process to be undertaken online is the payment of fees, whereas certain procedural documents are to be submitted to the Respondent No. 2 for the revalidation of the accreditation. The entire issue has arisen only because the fees of Rs. 17,250/- was not being accepted online after 16.12.2016.

44. **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 actions 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 July 2016 onwards is also due to the default of the Petitioner itself. 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.
45. From the submissions of the parties, the following issues arise before this Commission:
46. *Issue No 1: Whether the procedural delay in the revalidation by the Petitioner should be condoned and Whether the Petitioner is entitled to revalidation of accreditation of the project w.e.f. 17.12.2016 and revalidation of registration of its project w.e.f. 05.01.2017 after the validation period has expired? and*
47. *Issue No. 2: Whether RECs should be issued to the Petitioner from January 2017 onwards?*
48. No other issues were pressed or claimed.
49. We discuss the issues one by one:
50. *Issue No 1: Whether the procedural delay in the revalidation by the Petitioner should be condoned and Whether the Petitioner is entitled to revalidation of accreditation of the project w.e.f. 16.12.2016 and revalidation of registration of its project w.e.f. 05.01.2017 after the validation period has expired?*
51. The Petitioner has submitted that it owns and operates a 1.5 MW of wind generation capacity which stands accredited and registered as an Eligible Entity under the provisions of the REC Regulations. The accreditation was valid until 15.12.2016 and the registration was valid until 04.01.2017. On 26.11.2016, the Petitioner received an e-mail from the Respondent No. 2 with instructions for revalidation of accreditation however the email on the re-validation of accreditation dated 26.11.2016 was missed and also it could not complete the process of re-

validation of the accreditation before 16.12.2016. On 28.02.2017 when in normal routine it came to its notice of the Petitioner that the registration under REC mechanism has expired, it sought to pay the fees online for the revalidation of the accreditation however the online gateway did not accept the payment. The Petitioner requested Respondents to unlock the payment gateway for payment of the fees for revalidation of the accreditation by the Petitioner. However, there was no response from the Respondents.

52. 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.”

53. 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.”

54. 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.

...”

55. 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.”

56. 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.

57. The Commission observes that in the instant case, the 'Certificates of Accreditation' was valid upto 16.12.2016. The Petitioner was required to apply for re-validation of accreditation by 16.09.2016 i.e. at least three months in advance prior to expiry of accreditation. However, the Petitioner applied for the revalidation of the re-accreditation on 28.02.2017 i.e. seventy four days after the expiry of the accreditation. The Respondent No. 2 had instructed the Petitioner for re-validation of the accreditation on 26.11.2016. However, the Petitioner did not apply for re-validation of accreditation within time and applied for the same on 28.02.2017 i.e. seventy four days after the expiry of certificate of accreditation. It is also an admitted fact that the Petitioner has not initiated the process of revalidation of reaccreditation of the project under REC mechanism prior to three months as stipulated under Para 4.1(i) of

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

58. We are in agreement with the contention of Respondents. The Petitioner was required to submit the application for issuance of RECs in terms of Regulation 7 of the REC Regulations and REC Registration Procedure made thereunder. However, the Petitioner did not comply with the provision of the REC Regulations and REC Registration Procedure. During the course of hearing, learned counsel for 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 prior to three months as stipulated under Para 4.1(i) of the *Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee*. Learned counsel further submitted that this error was procedural in nature and the delay may be condoned. The representative of Respondent No.2 agreed that the RECs were 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 only 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.

Issue No. 2: Whether RECs should be issued to the Petitioner from January 2017 onwards?

59. 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. Therefore, RECs need to be issued from January, 2017. Accordingly, we direct Respondents to process the case of the petitioner for grant of RECs w.e.f. January, 2017 onwards till the period the Petitioner get 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 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.

60. Accordingly, the No. 204/MP/2018 is disposed of.

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