



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
**5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004**

O. P. No. 7 of 2015

And

I. A. No. 29 of 2015

Dated: 10.02.2016

**Present**

Sri Ismail Ali Khan, Chairman  
Sri H. Srinivasulu, Member  
Sri L. Manohar Reddy, Member

Between

M/s. Shalivahana (MWS) Green Energy Limited,  
Registered Office 7<sup>th</sup> Floor, Minerva Complex,  
94, S.D. Road, Secunderabad – 500 003

... Petitioner  
Petitioner in both O P and I A

And

AP Load Dispatch Centre (State Agency)  
APTRANSCO, Vidyut Soudha, Somajiguda,  
HYDERABAD – 500 082.

... Respondent  
Respondent in O P

State Load Dispatch Centre (State Agency)  
(Telangana State TRANSCO)  
TSTRANSCO, Vidyut Soudha, Somajiguda,  
HYDERABAD – 500 082.

Proposed Respondent  
Respondent in I A to be replace the Respondent in O P

This petition coming up for hearing on 27.01.2015, 13.04.2015, 22.06.2015, 16.07.2015, 04.08.2015, 08.09.2015, 04.11.2015, 07.12.2015 and 23.12.2015 for hearing. Sri Challa Gunaranjan, Counsel for the petitioner appeared on 27.01.2015, 04.11.2015 and 23.12.2015. Sri T. Sunil Chowdary, Advocate representing Sri. Challa Gunaranjan, Counsel for the Petitioner appeared on 13.04.2015. Sri. M. K.

Viswanadha Naidu, Advocate representing Sri. Challa Gunaranjan, Counsel for the Petitioner appeared on 22.06.2015, 16.07.2015, 04.08.2015 and 08.09.2015. There is no representation on behalf of the petitioner on 07.12.2015. Sri P. Siva Rao, Advocate appeared for the respondent on 27.01.2015. Sri. P. S. V. P. Anjaneya Rao, SE, SLDC represented the respondent on 13.04.2015 Sri. Y. Rama Rao, Standing Counsel for the Respondent, appeared on 22.06.2015, 04.08.2015 and 08.09.2015. Sri. J. Ashwini Kumar, Advocate representing Sri Y. Rama Rao, Standing Counsel for the respondent appeared on 16.07.2015. Sri. Y. Rama Rao, Standing Counsel for the Respondent along with Sri, P. Venkatesh, Advocate appeared on 07.12.2015 and 23.12.2015. The petition having stood for consideration to the date, the Commission passed the following:

### **ORDER**

This petition is before us pursuant to constitution of this Commission in terms of the provisions of the Andhra Pradesh Reorganisation Act, 2014 and consequential transfer of the case pending on the file of erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) by the new APERC since it pertains to the territorial jurisdiction of this Commission.

2. The petitioner is into business of generation of renewable power has instituted the petition questioning the legality of the proceedings issued by the respondent Telangana State Load Dispatch Centre (originally Andhra Pradesh State Load Dispatch Centre when the petition was filed before APERC) , the State agency appointed for granting REC accreditations in rejecting their application. The petition is filed under Regulation 8 (1) and 55 (1) of AP Electricity Regulatory Commission (business rules of the Commission) Regulation 1999 r/w Regulation 1 of 2012 r/w. Sec. 86 (1) (e) of the Electricity Act, 2003 (Act, 2003).

3. The petitioner stated that it is a private limited company constituted with the objective of carrying of business of generation of renewable power using MSW (Municipal Solid Waste) bio mass fuel etc. It has set up 12 MW power plant situated at Sultanabad Mandal, Karimnagar district, Andhra Pradesh (now in Telangana State). The unit was established in the year 2010 and commercial operations were commenced from 14.04.2010.

4. It is further stated that in pursuance to the Forum Of Regulators suggestion on REC mechanism in order to kick start the renewable energy certificate mechanism in the country, the Central Electricity Regulatory Commission (CERC ) vide No. L-1 / 12 / 2010 - CERC dt. 14.01.2010 promulgated CERC (terms and conditions for recognition and issuance of renewable energy certificate for renewable energy generation) Regulations, 2010. Further, the regulations were amended vide CERC's Notification dt. 29.09.2010 (original regulations and amended together referred to CERC, REC regulations). The CERC has issued a statement of objects and reasons along with CERC, REC regulations in order to explain the reasons behind the regulations.

5. In pursuance to the CERC, REC regulations, the erstwhile APERC notified APERC, REC regulations which came into force from 01.04.2012. Clause-3 of the said Regulations provides renewable power purchase obligations (RPPO), providing that the purchase of REC issued under the CERC, REC regulations shall also be treated as fulfillment of the RPOs prescribed therein. Clause-5 provides the role of state agency i.e., the TS State Load Dispatch Centre. Clause 6 provides the eligibility criteria for REC accreditations. Clause 5 (1) stipulates that the state agency shall function in accordance with the procedure/rules laid down by Central agency for discharge of its functions under the CERC, REC regulations. The APCPDCL / APDISCOMs (as they were in 2012) issued order for supply of power on firm basis from the petitioner through M/s. Knowledge Infrastructure Systems Private Limited. The petitioner filed its application on 03.05.2012 before the respondent for processing of accreditation application. As the accreditation was not granted, the petitioner has repeatedly brought to the notice of the respondent that non granting of accreditation is resulting in a huge loss of amounts per day to the petitioner. The respondent vide its letter dt. 20.07.2012 informed the petitioner that it has requested the APERC to provide certain clarifications with regard to the eligibility of the generators for accreditations which are selling power to APPCC i.e., to the APDISCOMs through power traders and further stated after receiving clarification from the APERC, application will be further processed. Aggrieved by the delaying tactics of the respondent, the petitioner filed W. P. No. 39386 / 2012 before the Hon'ble High Court of AP seeking a direction to the respondent therein to consider and dispose of accreditation application pending before it. The Hon'ble High Court directed the respondent to dispose of the application within

a period of four weeks vide its order dt. 03.01.2013. In pursuance to the order of the High Court, the respondents have rejected the application made by the applicant for granting of accreditation vide impugned letter dt. 05.02.2013 stating, “the petitioner has been selling power to APDISCOM through trader at a cost more than the pooled cost of power purchase and as such, the company is not entitled for accreditation.”

6. Learned counsel appearing on behalf of the petitioner submits that the respondent has rejected application on two counts. Firstly, the respondent has wholly misinterpreted the APERC, REC regulations and secondly it has totally ignored the CERC statements of objects and reasons on nothing more than hyper technical grounds. Clause-6 of APERC, REC regulation which deals with eligibility criteria for REC has been wholly misinterpreted. The respondent, while passing the impugned order, has relied upon Para - 6 (b) (i) and (c) and has completely ignored Para – 6 (b) (ii), under which the petitioner is eligible for REC accreditation. It is an admitted fact that the petitioner is not selling power to APDISCOMs (as it was doing then when it was seeking accreditation) at the tariff determined by the Commission and does not have PPA with distribution licensee. On the contrary it is selling its power to a trader who is also a licensee U/s. 14 of Act of 2003. The power is being sold under a short term contract and does not fall within the power of APERC. It is crystal clear and beyond shadow of doubt, it is a market driven PPA. Today, the trader in turn may be selling the power from petitioner’s plant to TSDISCOMs is nothing more than a coincidence that too through a transparent bidding process competing with large coal and gas based power project. Tomorrow it can be selling the same power to an entirely different entity. While the matter is thus, the action of the respondent in rejecting the application of the petitioner for accreditation is arbitrary, unjust and contrary to the regulations framed by the APERC and statement of objects stated by CERC. Therefore, the action of the respondent is liable to be declared as arbitrary, illegal and abuse of power.

7. Learned counsel for the petitioner further contend that APERC, REC regulations are identical to CERC, REC regulations which are based on the CERC statement of objects and reasons. Therefore, the grounds stated by the respondents in rejecting the application of the applicant is unjust. Further, the Hon’ble Supreme Court has held that interpretative notes appended to the rules by the rule making

authority are part of the rules and hence, are statutory in nature. As such, the respondents are bound to take into consideration the statement of objects and reasons stated by the CERC. Therefore, the action of the respondent in rejecting the application of the petitioner is perverse, devoid of reason, unwarranted and unjust.

8. Learned counsel for the petitioner also contended that the other purported reason for rejection is that the challenging of levy of electricity duty is pending before the Hon'ble High Court, matter is subjudice, therefore, the petitioner is disentitled to claim eligibility for accreditation. This is again is a misinterpretation of Clause - 6 (c) of the regulations. Firstly, the said clause is application only to CPP and secondly that such CPP if had availed the benefit of waiver of electricity duty, then it would be disentitled to claim eligibility for accreditation. In the present case, the petitioner is neither a CPP nor has ever claimed any benefit in the form of electricity duty. What all petitioner purported to have challenged before the High Court is the levy as being beyond the competence of State Legislature and the same is subjudice before the High Court. The challenge of such levy by the petitioner has nothing to do with the grant of accreditation under the APERC RPO regulation. On identical grounds, in the similar circumstances, wherein application for grant of accreditation was rejected to one of the NCE Developers has filed O. P. 56 / 2013 and the same was disposed of in favour of the petitioner therein by the erstwhile APERC vide orders dt.12.08.2013 which was upheld by the Hon'ble Appellate Tribunal for Electricity. The petitioner who is similarly situated is entitled for the similar relief. Therefore, the petition has to be allowed.

9. The petitioners have filed a petition seeking amendment of the cause title under Sec 94 (2) of the Act, 2003. The petitioner stated that it is a private limited company constituted with the objective of carrying on business of generation of renewable power using MSW (Municipal Solid Waste), biomass fuel etc. It has set up a 12 MW power plant, situated at Sultanabad Mandal, Karimnagar District in erstwhile Andhra Pradesh. The unit was established in the year 2010 and commercial operations were commenced from 14.04.2010.

10. The petitioner stated that the original petition is filed questioning the proceedings issued by the Respondent (AP State Load Dispatch Centre, the State Agency appointed for granting REC Accreditations) in rejecting the REC application of

the petitioner made under the Regulations 1 of 2012 and seeking declaration from the Commission that it is eligible for REC Accreditation under regulation 6 (b) (ii) of the Regulations no. 1 of 2012; declare the proceedings in the letter No. CESLDC / SEPP / D2 / F.REC / D. No. 38 / 13 dated 05.02.2013 of the SLDC in rejecting the REC application of petitioner as arbitrary, illegal and abuse of power consequently direct the SLDC to grant accreditation to it forthwith and other reliefs.

11. The petitioner stated that as per the Andhra Pradesh Reorganization Act, 2014 the state of Andhra Pradesh is bifurcated into state of Telangana and state of Andhra Pradesh. The AP State Load Dispatch Centre (State Agency) AP Transco, Vidyut Soudha, Somajiguda, Hyderabad – 500 008, rep. by its Chief Engineer has been renamed as State Load Dispatch Centre, (Telangana State Transco) (TSSLDC), Chief Engineer, Room No. 611 A Block, SLDC of the state of Telangana (TSSLDC), TSTRANSCO, Vidyut Soudha, Khairtabad, Hyderabad – 500 082, therefore in view of the above, it is required to substitute the TSSLDC as respondent in the place of the APSLDC, and if the same is not done, applicant will be put to irreparable loss and hardship. The respondent is re-named as follows:

State Load Dispatch Centre, (Telangana State Transco)  
Chief Engineer, Room No. 611, A block, SLDC of the State of Telangana  
(TSSLDC), TSTRANSCO, Vidyut Soudha, Khairtabad, Hyderabad – 500 082.

12. The petitioner stated that in the facts and circumstances stated, it prays that the Commission may be pleased to permit the petitioner to amend the present cause title by substituting the name of the respondent as State Load Dispatch Centre, (Telangana State Transco), Chief Engineer, Room No. 611, A Block, SLDC of the State of Telangana (TSSLDC), TSTRANSCO, Vidyut Soudha, Khairtabad, Hyderabad – 500 082 in place of the AP State Load Dispatch Centre (State Agency) AP Transco, Vidyut Soudha, Somajiguda, Hyderabad – 500 008. Rep. by its Chief Engineer in the above OP and pass such other order or orders as this Hon'ble Commission may deem fit and proper in the interest of Justice.

13. The A P State Load Dispatch Centre (now TSSLDC) being a state agency has filed counter affidavit opposing the petition filed by the petitioner. It is the submission of the respondent that it is a statutory body constituted U/s. 31 of Act, 2003, that apart as per Regulation 1 / 2012 (renewable power purchase obligation (compliance by purchase of renewable energy/renewable energy certificates) regulations, 2012), the

respondent is nodal agency to examine the request of RE generator and to provide accreditation for issuance of REC certificates. The claim of the petitioner is that though it has supplied power to the DISCOMs under the short term purchase for the period from 15.06.2012 to 30.05.2013, at a rate of Rs. 5 per KWH and claims eligibility as per Clause-6 of the APERC regulation. The issue is whether the petitioner is entitled for REC certificates having regard to the facts of the case. The respondents stated that as per APERC regulations and CERC, REC amended Regulation dt.10.7.2013, even if the generator supplied the power through trader to DISCOMs more than preferential tariff as fixed by the Commission, the said supplier is not eligible for REC certificates. Even according to the petitioner, the supply of power is through a trader i.e., M/s. Knowledge Infrastructure Private Limited to APDISCOMs at Rs.5 per KW which is arrived as per bidding guidelines issued by the Government in sourcing their power under Sec.63 of the Act, 2003. The said price is also adopted by the APERC. Therefore, the petitioner having participated through trader in the bids invited as per Sec.63 of the Act, 2003, is not entitled for accreditation. Therefore, their action in rejecting the accreditation application of the petitioner is strictly in accordance with law and the petitioner is not entitled for the relief claimed in the petition. The petition is liable to be dismissed. It did not file any counter affidavit opposing the amendment petition filed by the petitioner.

14. Heard the learned counsel for the petitioner and the Standing Counsel for the respondent. Perused the material on record.

15. The sole issue that falls for consideration in this petition is:

“Whether the petitioner is eligible for accreditation under Regulation 1 of 2012, and the impugned order passed by the respondent is legal, valid and sustainable in the eye of law?”

16. During the course of hearing the petitioner had filed I. A. No. 29 of 2015 mentioned above seeking to amend the title in the original petition by bringing the parties to the case in line with the territorial jurisdiction of the Commission. The respondents did not oppose this said petition, therefore, the prayer in the interlocutory petition is allowed.

17. In order to decide this issue, it would be appropriate for us to extract Clause-6 of APERC, REC regulation dealing with eligibility criteria for REC. This Commission, after its constitution in the month of November, 2014 has adopted Regulation 1 of 2012 relating to APERC renewable power purchase obligation (compliance by purchase of renewable energy / renewable energy certificate) Regulations, 2012. Clause-6 of the regulation reads as follows:

**“6. Eligibility and registration for certificates:**

1) A generating Company (including a captive power plant) in Andhra Pradesh engaged in generation of electricity from renewable energy sources shall be eligible for obtaining accreditation from the state agency if it fulfills the following conditions:

a) It does not have any power purchase agreement for the capacity related to such generation to sell electricity at a tariff determined by the Commission from time to time for sale of energy to a distribution licensee; and

b) It sells the electricity generated either:

- i) To the distribution licensee in the State of Andhra Pradesh at a pooled cost of power purchase, **or**
- ii) **To any other licensee or to an open access consumer at a mutual agreed price, or through power exchange at market determined price.”**

18. Furthermore, we have to notice the statement of objects and reasons stated by CERC in paragraph 3.5.4 which reads as follows:

“3.5.4. On the suggestion that- in the event of sale of electricity component through open access etc., **resulting in recovery of cost higher than the preferential tariff** such sale should not be eligible for REC – the Commission would like to articulate that the **price of electricity sold through traders, power exchange or open access is market determined and involves risks and returns on varying nature. As such, it would not be desirable to put restriction as suggested on such transactions.”**

19. It is seen while rejecting the REC application of the petitioner, respondents have relied upon Para – 6 (b) (i) and (c) and have completely not taken into consideration Paragraph – 6 (b) (ii) which clearly state that “or, to any other licensee or to an open

access consumer at a mutual agreed price, and through power exchange at market determined price”. In our opinion, the petitioner’s case squarely falls under sub-clause (b) of clause-6 of Regulation-1 of 2012 wherein a generating company (including a CPP) is eligible for obtaining accreditation from the respondent if such generating company sells electricity generated by it either (i) to the distribution licensee in the State of AP at the pooled cost of power purchase or (ii) to any other licensee or to an open access consumer at a mutual agreed price, or through power exchange at market determined price.

20. Furthermore, this Commission shall have to examine the word electricity trader in the light of Act of 2003. “The Electricity Trader” means a person who has been granted a license to undertake trading in electricity U/s.12 of the Act, 2003. Therefore, any generator who is selling power through a trader which is a licensee is eligible for accreditation. In turn, such trader might be selling power from the generator to one of the DISCOMs. The hyper technical approach of the respondents that simply because the trader is selling power to one of the DISCOMs that by itself will not make the generator ineligible for accreditation.

21. We are in agreement with the submission of the counsel for the petitioner that the stand of the respondent that the matter relating to levy of electricity duty is subjudice as the petitioner has challenged levy of electricity duty before the High Court as such is disentitled to claim eligibility for accreditation due to misinterpretation of the clauses in the APERC RPO regulation more particularly clause 6 (c). It has to be made clear that the clause has application to CPP. Further such CPP if had availed benefit of waiver of electricity duty, then it would be disentitled to claim eligibility for accreditation. As the petitioner is neither a CPP nor has ever claimed any benefit from waiver of electricity duty, the benefit accreditation has to be passed on to the petitioner. It is axiomatic to state here that the pendency of any case before the High Court in respect of electricity duty is neither relevant nor has a bearing on the claim made by the petitioner with regard to granting of accreditation under the regulation as has been explained above. Accordingly, we reject the contention of the respondent.

22. Having regard to the facts and circumstances obtaining in the petition, we are of the opinion that petitioner is entitled and eligible for accreditation as per Regulation

1 of 2012. The respondent TS State Load Dispatch Centre, state agency is directed to issue accreditation.

The petition is allowed accordingly.

This order is corrected and signed on this the 10<sup>th</sup> day of February, 2016.

**Sd/-**  
**(L. MANOHAR REDDY)**  
**MEMBER**

**Sd/-**  
**(H. SRINIVASULU)**  
**MEMBER**

**Sd/-**  
**(ISMAIL ALI KHAN)**  
**CHAIRMAN**

**CERTIFIED COPY**