



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004

O. P. No. 45 of 2022

Dated 19.07.2023

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s. SLS Power Corporation Limited,
Regd. Office at: # 121/1, 1st Main Road,
2nd Stage West of Chord Road,
Malakshmipuram, Near G.D.Naidu Hall,
Bengaluru, Karnataka 560 086.

... Petitioner

AND

Telangana State Load Despatch Centre,
Vidyut Soudha, Khairatabad,
Hyderabad 500 082.

... Respondent

The petition came up for hearing on 11.08.2022, 01.09.2022, 22.09.2022, 30.09.2022 and 17.10.2022. Sri M.Sridhar, Advocate representing Sri. Challa Gunaranjan, counsel for petitioner appeared on 11.08.2022, Sri. Challa Gunaranjan, counsel for petitioner along with Sri. Deepak Chowdary Advocate appeared on 01.09.2022, Ms. K. Sravani Advocate representing Sri. Challa Gunaranjan, Advocate for petitioner appeared on 22.09.2022 and Sri. Nishanth Pinnamaneni, Advocate representing Sri. Challa Gunaranjan, counsel for petitioner appeared on 30.09.2022 and 17.10.2022. Sri. Mohammad Bande Ali, Law Attaché representative of the respondent appeared on 11.08.2022. Sri Sankalp, Advocate representing Sri. Y. Rama Rao, Counsel for respondent appeared on 01.09.2022 and 17.10.2022. There is no representation on behalf of respondent on 22.09.2022. Sri. J. Rajesh, Advocate representing Sri. Y. Rama Rao, Counsel for respondent appeared on 30.09.2022. The

matter having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. SLS Power Corporation Limited (petitioner) has filed the petition under Section 86 (1) (e) of the Electricity Act, 2003 (Act, 2003) read with Regulation No. 2 of 2015 seeking declaration that the petitioner's hydel project is entitled to be registered under RPPO regulation for the period from 26.01.2014 to 28.10.2017 under RPPO and consequently grant accreditation. The averments of the petition are as follows:

- a. It is stated that the present petition is being filed pursuant to the withdrawal of Petition No.518/MP/2020 before the Central Electricity Regulatory Commission (CERC) on 05.09.2021, by seeking liberty to agitate the issue of accreditation before this Commission.
- b. It is stated that the petitioner is a company registered under the provisions of Companies Act, 1956 on 29.07.2005. The petitioner has established a 24 MW small hydro power plant at Dummagudem Village and Mandal, Khammam District.
- c. It is stated that the respondent is the State Load Dispatch Centre (SLDC) established in pursuance of Section 31 of the Act, 2003 and is operated by the Transmission Corporation of Telangana Limited (TSTRANSCO) pursuant to a notification under Section 32(2) of the Act. The respondent is also the State Agency notified under the Andhra Pradesh Electricity Regulatory Commission (APERC) Regulation No.1 of 2012, being the Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2012, on 01.04.2012 (RPPO regulation).
- d. It is stated that the petitioner, intending to set up a small hydro power plant, was granted a lease of Ac.16.00 by the then Government of Andhra Pradesh (GoAP) for a period of 30 years vide G.O.Ms.No.888 dated 17.07.2008. The CE (Commercial) of the erstwhile Transmission Corporation of Andhra Pradesh (APTRANSCO) vide letter dated 02.01.2010 accorded a revised scheme of approval for extension of 20 km of the 132 kV line from the 132/33 kV Bhadrachalam SS to the petitioner's project. The petitioner has set up a 24 MW (6x4000 kW) small hydro power plant at the existing anicut across the branch of Godavari river at Dummagudem village and mandal, Khammam district. The unit was established in the year 2008, achieved synchronization in on

09.12.2013 and commercial operation date (COD) was achieved on 26.01.2014.

- e. It is stated that in the meantime, the petitioner filed an application on 23.11.2012 with the respondent seeking the accreditation certificate for its project along with the relevant documents.
- f. It is stated that in order to commence the REC mechanism in the country, the CERC vide No.L-1/12/2010-CERC, dated 14.01.2010 issued the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC regulation).
- g. It is stated that pursuant to the issuance of the REC regulation, the erstwhile APERC notified the RPPO Regulation on 01.04.2012. The same were adopted by the Commission vide Regulation No.1 of 2014 and were in force during the period for which relief is being sought by the petitioner through the present petition. Clause 5 provides the role of the respondent State Agency. Clause 6 provides the eligibility criteria for REC accreditation and prescribes that a generating company shall be eligible for obtaining accreditation from the SLDC if it fulfils the criteria therein. The three criteria, in brief, are:
 - i. That the generating company must not have a PPA with the distributing licensee to sell the capacity to be accredited at a tariff determined by the Commission.
 - ii. That the power generated must be sold either to the distribution licensee for the state of Andhra Pradesh at the pooled cost, or to any other licensee or open access consumer, or through a power exchange.
 - iii. That for a captive generator, no concessional/promotional wheeling or transmission charges, or banking facility or waiver of electricity duty is availed.
- h. It is stated that from 01.03.2014, the joint meter readings of main, check and standby meters for the month of February 2014 were taken by the officials of the transmission licensee. All the meters procured by the petitioner were certified and calibrated in the presence of the officials of the distribution and transmission licensees. The joint meter readings for the petitioner's plant were being taken by officials of the transmission licensee for the state of Telangana from January, 2014.
- i. It is stated that the petitioner vide letter dated 24.04.2017 addressed to the respondent brought to the notice of the officials of the location of the REC net metering arrangement and the devices of the generating plant as indicated and inspection report of RE projects for accreditation by the respondent. Vide this

letter, the petitioner again sought REC accreditation stating that it had already submitted all the documents required by the respondent and was waiting for its approval.

- j. It is stated that the respondent vide letter dated 16.05.2017 referring to the application of petitioner dated 08.10.2012 seeking accreditation, informed that the petitioner's application for accreditation of 11.84 MW capacity small hydro power plant had been rejected on the ground that "*Metering is not complied with as per the standards issued by CEA/CERC procedures*". This was despite the fact that joint meter readings were being continuously taken from January, 2014 onwards, yet it was only in May, 2017 that for the first time, it was alleged that the metering arrangements were not as per standards.
- k. It is stated that the petitioner states that there was no correspondence whatsoever from the respondent from the date of COD informing the petitioner that the meters installed at the petitioner's plant were not in conformity with any standards.
- l. It is stated that the petitioner once again on 04.07.2017 filed another application addressed to the respondent with all the documents required for grant of accreditation along with the demand draft dated 23.06.2017 requesting accreditation of 11.84 MW out of the total 24 MW, as the petitioner had open access NOC for 11.84 MW. The respondent, despite stating earlier that the metering arrangements were not proper, vide letter dated 28.10.2017 granted accreditation to the petitioner for 24 MW from 28.10.2017 to 27.10.2022.
- m. It is stated that the above accreditation was granted in on 28.10.2017 to the petitioner with the same set of meters as were installed at the time of commissioning in 2014. As such, it is evident that the letter dated 16.05.2017 stating that the meters installed by the petitioner were not in compliance with the standards of (Central Electricity Authority (CEA)/CERC, and the consequent rejection was ex-facie illegal and arbitrary.
- n. It is stated that the National Load Dispatch Centre (NLDC) issues renewable energy compliance (REC) certificate to the renewable energy (RE) generator who has been granted accreditation by the concerned SLDC along with the energy injection report (EIR) of the concerned SLDC. The petitioner states it was wrongfully denied accreditation by the respondent in respect of the energy injected by it from 26.01.2014 to 28.10.2017.

- o. It is stated that the petitioner approached the CERC vide Petition No.518/MP/2020 seeking a direction to the respondent herein to grant accreditation in respect of the renewable energy it has supplied, and which was accounted for by the respondent for the period from 26.01.2014 to 28.10.2017 considering the application of the petitioner dated 08.10.2012 bearing application number APPLAPOACCR0810121652 and consequently to direct the NLDC to issue REC for the energy injected by the petitioner.
- p. It is stated that the CERC vide its order dated 05.09.2021 granted liberty to the petitioner to approach the appropriate forum in accordance with law.
- q. It is stated that the petitioner is filing the present petition inter alia on the following grounds:
- i. It is stated that it had applied for accreditation in the year 2012. The accreditation application was kept pending without any intimation to the petitioner, in spite of repeated pursuance by the petitioner to secure accreditation to its small hydro power station.
 - ii. It is stated that the respondent agency did not seek any additional information or document by any communication seeking any other clarification for granting accreditation to the petitioner.
 - iii. It is stated that the respondent and the officials of the transmission licensee had specific knowledge of the meters installed in 2014 itself, and joint meter readings were being taken from 26.01.2014 onwards and the officials of the respondent have been taking the joint reading of the meters from June 2014 onwards.
 - iv. It is stated that it is an undisputed fact that with the very same set of meters, accreditation to the petitioner was given on 28.10.2017. As such, the refusal to grant accreditation to the petitioner for the period 26.01.2014 to 28.10.2017 is patently against the provisions of the RPPO regulation.
 - v. It is stated that the respondent is required under the RPPO regulation to grant accreditation if the criteria under clause 6 of the RPPO regulation are fulfilled. A vague allegation that the metering arrangements are not proper, without any specifics and without any further inspection, is not a ground to reject accreditation.
 - vi. It is stated that that the petitioner supplied renewable energy in compliance with the provisions applicable for issuance of RECs. The fact that the petitioner had supplied renewable energy from the date of COD is evident from the joint meter reading reports from 2014 to 2017 and the EIR of SLDC filed with the petition as annexure with the present petition. The petitioner could not register itself with the central agency because the State Agency wrongly denied the accreditation in respect of the energy injected by the petitioner from 26.01.2014 to 28.10.2017.
 - vii. It is stated that non-grant of accreditation in the facts of the present case would cause irreparable loss and injury to the petitioner's power project. The petitioner made investments in the power project on the basis of the

legitimate expectation under the RPPO regulation which provided for REC.

viii. It is stated that the petitioner had no choice but to apply afresh with TSTRANSCO in 2017 for the second time to secure accreditation for getting registered with the central agency to avail the REC benefit. Though the petitioner applied for accreditation from the date of COD, the respondent granted accreditation only from 28.10.2017. There is no default on the part of the petitioner in applying for accreditation as it was the respondent that kept the petitioner's application dated August 2012 pending till May 2017 and rejected the same wrongfully.

2. The petitioner has sought the following reliefs in the petition.

- "a. *Declare that the petitioner is entitled to accreditation of the petitioner's project with effect from 26.01.2014 to 28.10.2017 under the RPPO Regulations;*
- b. *Consequently, direct the respondent to take necessary steps to grant accreditation to the petitioner's project from 26.01.2014 to 28.10.2017."*

3. The respondent has filed the counter affidavit and the contents of it are extracted below:

a. It is stated that as per clause (6) of APERC Regulation No.1 of 2012 as adopted by TSERC Regulation No.1 of 2014.

Eligibility and Registration for Certificates: A generating company [including a captive power producer (CPP)] in Andhra Pradesh engaged in generation of electricity from renewable energy sources shall be eligible for obtaining accreditation from the State Agency if it fulfils the following conditions.

- 1. *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*
- 2. *It sells the electricity generated either (i) to the distribution licensee in the State of Andhra Pradesh at the pooled cost of power purchase, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.*
- 3. *That in respect of CPP, it has not at all availed or does not at all propose to avail any benefit in the form of concessional/ promotional transmission or wheeling charges, banking facility and waiver of electricity duty.*

b. It is stated that petitioner made an application on 08.10.2012 vide application No.APPLAP0ACCR0810121652 and applied for REC accreditation of their 3 units with a total capacity of 11.84 MW, as they are allowed to inject into the grid a maximum capacity of 11.84 MW only as per the No Objection Certificate (NOC) issued by TSSLDC, but it is stated that the petitioner has not submitted all the required documents for REC accreditation.

- c. It is stated that petitioner has been selling power of 11.84 MW to power exchange that is India Energy Exchange (IEX) through the trader that is M/s Tata Power Trading Company Limited from 26.01.2014 to till date.
- d. It is stated that in reply to the petitioners allegation with respect to their application, the petitioner has applied for REC accreditation in 2012, has achieved COD on 26.01.2014 and regular correspondence was being done with the petitioner from December, 2014 to March, 2017 duly informing them to submit the pending documents for further processing of their application as the petitioner has not submitted the required documents requested by SLDC. It was once again informed to submit the documents within 7 working days of receipt of the letter dated 21.09.2016, failing which the application shall be rejected as per *“Model Procedure/Guidelines for Accreditation of Renewable Energy Generation Project”* approved by CERC dated 05.11.2015, which state that *“the State Agency may abandon the accreditation, if the applicant fails to furnish the information requested by the State Agency within 7 working days.”*
- e. It is stated that TSSLDC has rejected the REC accreditation application submitted during the year 2012 by petitioner on 16.05.2017 in view of the meters were not as per the CEA standards.
- f. It is stated that the COD was achieved on 26.01.2014 and there was a regular correspondence with the petitioner regarding the meters to be installed along with the pending documents to be submitted to TSSLDC and hence the petitioner’s claim on TSSLDC that there was no correspondence from the date of COD is absolutely false.
- g. It is stated that the petitioner on 26.06.2017 again applied for REC accreditation of their 24 MW small hydro power plant located at Dummugudem village, Kothagudem Bhadradi district with new online application No.APPLTG0ACCR 2606173013 and requested to issue accreditation certificate.
- h. It is stated that as the petitioner has submitted all documents required for REC accreditation in time along with application, Accreditation was granted to the petitioner on 28.10.2017 by the respondent herein under REC mechanism subject to CERC and TSERC, REC regulations amended from time to time and payment of transmission charges every month.
- i. It is stated that subsequently, the petitioner has been registered by NLDC under REC Mechanism on 30.11.2017.

- j. It is stated that as per clause No.2.1 of CERC approved REC procedures dated 05.11.2015, *“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.”*
- k. It is stated that as COD of petitioner is 26.01.2014 and registered by NLDC on 30.11.2017, the petitioner is eligible to avail RECs from 01.12.2017 as per CERC, REC procedures.
- l. It is stated that hence, Energy Injection Report (EIR) of the petitioner from the month of December, 2017 to till date are being sent to NLDC for issuance of RECs.
- m. It is stated that the petitioner has applied for accreditation in 2012, COD itself was achieved on 26.01.2014 and there was a regular correspondence from 12/2014 to 03/2017 from SLDC to the petitioner for submission of their pending documents. Hence, the petitioner application was rejected not only for the reason of *“Meters are not as per CEA standards”* but also due to abnormal delay in submission of the pending documents, though it was not mentioned in rejection letter. However, the same can be inferred from the correspondences between the petitioner and the respondent.
- n. It is stated that the petitioner then again applied for accreditation and after submission of their documents in full shape on 26.06.2017, Accreditation was granted to them on 28.10.2017 and subsequently registered at NLDC on 30.11.2017, hence energy Injection reports are being sent to NLDC for issuance of RECs from 01.12.2017 as per CERC, REC procedures.
- o. Further the respondent also stated that, though petitioner has achieved COD on 26.01.2014, RECs cannot be issued from 26.01.2014 as RECs can be issued only after the petitioner is registered with NLDC. The petitioner can be registered at NLDC only after grant of accreditation by the respondent. The respondent can issue REC accreditation only after receipt of all required documents as per CERC REC procedures. Since the firm has not submitted these documents in full shape until 2017, the accreditation cannot be given from 2014 under any circumstances.

- p. It is stated that hence, the petitioners claim of “though it has applied for accreditation in 2012 itself, it was kept pending at TSSLDC” is totally illegal and arbitrary.
- q. It is stated that petitioner filed a petition vide Petition No.518/MP/2020 before CERC praying for grant of accreditation of the petitioner’s project with the effect from 26.01.2014 to 28.10.2017 for issuance of RECs for the energy injected during the period from 26.01.2014 to 28.10.2017. On 25.07.2020, petition copy was submitted to TSSLDC by the petitioner as per the directions of CERC. The CERC directed the respondent to file the reply.
- r. It is stated that in view of the above, the following was submitted by respondent to CERC as reply to the petition on 18.09.2020;
- (i) In respect of the petition, it is stated that the respondent has already issued EIR for the month of December 2017 and sent to the central agency being NLDC for issuance of RECs for the month of December 2017 on 25.04.2018 and also sent an email on 27.04.2018.
 - (ii) It is stated that the respondent has been issuing EIRs of the petitioner regularly to NLDC and NLDC has been issuing RECs from time to time.
 - (iii) It is stated that NLDC has issued 69098 RECs to the petitioner from January 2018 to February 2020.
 - (iv) It is stated that as per the clause No.10(1) of the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and as per clause No.2.1 of CERC Approved REC Procedures dated 05.11.2015,
“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.”
 - (v) It is stated that with respect to the petitioner, the date of commercial operation was 26.01.2014 and the date of registration by the central agency was 30.11.2017 and thus the EIR are being sent to NLDC from 01.12.2017 onwards.
 - (vi) It is stated that in view of the above, the respondent requested the CERC to dismiss the petition.
 - (vii) CERC vide its order dated 05.09.2021 directed the petitioner to approach the appropriate forum as per liberty sought for resolution of disputes regarding accreditation duly permitting the petitioner to withdraw the petition. Hence, the Petition No.518/MP/2020 in CERC was disposed of by the CERC as withdrawn.
- s. It is stated that in view of all the aforesaid reasons, the respondent states that, the petitioners request for grant of accreditation and registration of the petitioner under the renewable energy certificates mechanism for issuance of RECs for

the period from 26.01.2014 to 28.10.2017 cannot be accepted and is illegal under CERC Approved REC Procedure.

- t. It is stated that the respondent's decision in refusing to grant accreditation for issuance of RECs for the period from 26.01.2014 to 28.10.2017 is legal and in accordance with law as per CERC approved REC procedure.
- u. In the light of aforesaid facts and circumstances, it is prayed the Commission to dismiss the petition.

3. The petitioner has filed the rejoinder and the contentions are extracted as below:

- a. It is stated that upon the perusal of the counter filed by the respondent herein, the petitioner denies any and all averments and states that nothing contained in the rejoinder may be deemed to be admitted merely for the want of a specific traverse, unless specifically admitted herein.
- b. It is stated that the respondent is not disputing the fact that the petitioner was indeed injecting power from 26.10.2014 onwards and selling the same through open access. The petitioner has submitted the required documents in its application and vide letter dated 12.12.2012, where the metering arrangements were said to be approved by the CEIG, Andhra Pradesh.
- c. It is stated that from the inspection of the petitioner's unit on 18.02.2017 by the officials of the respondent, till the date of accreditation of the petitioner's unit on 28.10.2017, there was no new metering arrangements that were put in place by the petitioner. As such, the fact that the petitioner's application for the earlier period from 2014 onwards was rejected only 16.05.2017 was entirely unwarranted. It is stated that the petitioner at this stage and in the present petition, is only seeking accreditation for the period between 26.01.2014 to 28.10.2017, and not the RECs, which would have to be issued by the NLDC for that period of time.
- d. It is stated that the reasons for the rejection are clear in the letter dated 16.05.2017, and the respondent cannot seek to improve the same at this point of time. However, when granted accreditation in 2017, there were no new installations carried out and on the very same set of metering arrangements it was granted which clearly demonstrates that the reason of rejection mentioned in 16.05.2017 is unfounded. The Hon'ble Supreme Court in the case of

Mohinder Singh Gill & Ors. vs. The Chief Election Commissioner, New Delhi & Ors. had held that,

“when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”

The contents of the para hereinabove are reiterated. In reply to para No.5 (ii), it is submitted that the contentions of the respondent are matter of record and as such do not require any specific reply. In reply to para Nos. 5 (iii) and (iv), it is submitted that the petitioner is only seeking accreditation for the period between 26.01.2014 to 28.10.2017, and not the RECs, which would have to be issued by the NLDC for that period of time. As such, the question of whether or not the petitioner would be granted RECs or not is not relevant to the present petition.

e. Therefore, in view of the above submissions, the petitioner prays the Commission to allow the petition as prayed for.

4. The Commission has heard the parties and also examined the material available to it. The submissions made by the parties on various dates of hearing are extracted for ready reference.

Record of proceedings dated 11.08.2022:

“... .. The advocate representing the counsel for petitioner stated that the counter affidavit is yet to be filed by the respondent. The advocate representing the counsel for respondent stated that the counter affidavit has already been filed. The Commission observed that the respondent should make available a copy of the counter affidavit and the petitioner is at liberty to file rejoinder, if any, by the next date of hearing duly serving a copy on the respondent. No further adjournment would be granted on any of the above pretext. The matter is adjourned on the condition that submissions will be made by the parties on the next date of hearing.”

Record of proceedings dated 01.09.2022:

“... .. The counsel for petitioner stated that the counter affidavit has been filed and he needs further time for filing a rejoinder. The advocate representing Sri Y.Rama Rao, counsel for respondent has no objection. Accordingly, the matter is adjourned.”

Record of proceedings dated 22.09.2022:

“... .. The advocate representing the counsel for petitioner stated that since counter affidavit had been filed in the matter, she sought time for filing rejoinder in this case. The representative of the respondent has no objection for the same. Considering the submissions of the parties, the matter is adjourned.”

Record of proceedings dated 30.09.2022:

“... .. The advocate representing the counsel for petitioner stated that the rejoinder in this petition has already been filed and thus, the pleadings are complete. The advocate representing the counsel for respondent sought time by stating that pleadings are complete but the counsel for respondent is otherwise busy. Therefore, he sought time to make submissions on another date. Considering the request of the respondent, the matter is adjourned.”

Record of proceedings dated 17.10.2022:

“... .. The advocate representing the counsel for petitioner stated that the issue in the petition is with regard to accreditation of the petitioner’s project as renewable source for REC mechanism. The petitioner’s project was commissioned in 2014 and meter readings were started from thereon. The petitioner sought accreditation in the year 2014. However, the request of the petitioner was refused in May, 2017. The reason afforded by the respondent was that the metering required for RPPO has not been complied with. The petitioner applied for the same again in July, 2017 and it was granted accreditation for 5 years, which is valid upto October, 2022. While accepting the fresh request, the respondent did not object or raise any question on the metering as was earlier done. The respondent ought to have considered accreditation for the earlier period also. The respondent did not mention or convey any other reasons for refusing accreditation for the earlier period of 2014 to 2017.

The advocate representing the counsel for the respondent stated that the petitioner had never complied with the requirements of the respondent. He traced out the correspondents made by the respondent requiring the petitioner to submit certain documents and information as early as in the year 2015 itself and the petitioner was seeking time to file the same time and again. Hence, the respondent had no option but to reject the application for accreditation. The rejection is not based on the sole ground of metering aspect but also non-compliance of the requirements sought by the respondent. Subsequently, in the fresh application, the petitioner submitted all the requirements, hence accordingly the request was considered.

The advocate representing the counsel for petitioner stated that the respondent cannot improve upon itself decision subsequent to the filing of the petition before the Commission. In this regard, he has relied on the Hon’ble Supreme Court judgment reported in 1978 SCC 405 in the matter of Mohinder Singh Gill & another Vs. The Chief Election Commissioner, New Delhi & others. The Hon’ble Supreme Court emphasized that the contesting party cannot add or vary the contents of the decision taken by it subsequent to the filing of petitions or representations before the competent authorities. Therefore, the contentions raised by the respondent are beyond the scope of the petition.

The advocate representing the counsel for petitioner sought the prayer to be allowed for continuity sake as also to derive the consequential benefits for accreditation. The advocate representing the counsel for respondent sought rejection of the petition as the petitioner suffered refusal way back in the year 2017 and there is no case for consideration in view of the record speaking against the petitioner. Considering the submissions of the parties, the matter is reserved for orders.”

5. In order to appreciate the issues involved in this petition, it may be appropriate to notice the correspondence between the petitioner and respondent in details. Accordingly, the said correspondence to the extent it is relevant, is extracted below:

a. Letter dated 04.12.2014 of SLDC:

“With reference to your request for REC accreditation of your Mini Hydel plant, the following pending documents are yet to be received by this office for further processing of your application for accreditation by State Agency.

- (1) (a) *Web application No.APPLAP0ACCR0810121652 shall be signed on all pages with seal of your company by changing accreditation capacity to 11.84 MW as NOC was issued by TSSLDC for 11.84 MW & Installed Capacity to 12 MW, as only 3 Nos generators (each 4 MW capacity) out of 6 Nos were synchronized with grid and, also by changing date of commissioning to the same date as mentioned in synchronization certificate.*
- (b) *Declaration on 100/- Non-Judicial stamp paper with sign and seal of your company by revising the capacity to 11.84 MW since you had previously declared the capacity as 24 MW.*
- (2) *Approved single line diagram by CEIG/CE/Zone/TRANSCO showing metering arrangement at plant and substation including standby meter arrangement at 132 kV, Bhadrachalam as per the T.O.O. cited in ref (3).*
- (3) (a) *0.2s class Non-ABT meters (with 15 minutes integration, MRI Compatibility and storage of load survey data for minimum 45 days) details (Meter type, Manufacturer, Model, Serial Number, Class and Accuracy) for recording Gross Energy Generated at plant.*
- (b) *Auxiliary consumption Recording meter details regarding accuracy, class as per CEA (Installation & Operation of Meters) Regulations 2006 and Amendment regulations 2010 dated 04.06.2010.*
- (4) *TRANSCO/EBC software compatibility certificates of gross energy generated and auxiliary consumption meters at the plant.*
- (5) (a) *NABL Certified laboratory test reports of gross energy generated and auxiliary consumption meters at the plant, witnessed by concerned M&P division/Discom & MRT division/Transco.*
- (b) *NABL Certified laboratory test reports of 0.2s CTs (5 VA burden) and 0.2 class PTs (10 VA burden) used for gross energy meters at plant, witnessed by concerned M&P division/Discom & MRT division/Transco.*
- (6) *Certified copy of plant commissioning certificate with the details of all energy meters, CTs & PTs at plant and substation.*
- (7) *Documentary evidence for the critical equipment (i.e., Turbine and Generator) complying with relevant applicable IEC or CEA standards.*
- (8) *Report from Transco/Discom regarding installation of AMR modules to billing meters at Transco/Discom SS for transmitting energy billing data to EBC/Transco.*
- (9) *Report from Transco/Discom regarding provision of directional protection for generator feeder at Transco/Discom SS.*

- (10) *Statutory clearances obtained by the generator including environmental clearance*
- (a) *latest environmental clearance from pollution control board as your submitted consent order valid up to 30.11.2014*
 - (b) *fire safety certificate from fire department*
 - (c) *Latest documentary evidence towards payment of rent, Cess and Nala Tax to Irrigation division, Bhadrachalam as per the Lease Deed.*

Further, to the above, any other information if required after receipt of above documents will be sought, to enable State Agency to comply with requirements of the procedure for accreditation.

b. Letter dated 28.05.2015 of SLDC:

“With reference to your request for REC accreditation of your Mini Hydel plant, the following pending documents are yet to be received by this office for further processing of your application for accreditation by State Agency.

Pending Documents

- (1) *Resubmit the web application as per the enclosed web application with this letter.*
- (2) *Resubmit the Declaration on 100/- Non-Judicial stamp paper by striking off non-related paras, as per the enclosed declaration with this letter.*
- (3) *Revised single line diagram approved by CE/OMC/Warangal Zone /TRANSCO showing metering arrangement at plant and substation including standby meter arrangement at 132 kV, Bhadrachalam as per the T.O.Os. cited in ref (3&4).*
- (4) *TRANSCO/EBC software compatibility certificates of Gross energy generated and auxiliary consumption meters at the plant.*
- (5)
 - (a) *Test reports of gross energy generated and auxiliary consumption meters at the plant.*
 - (b) *Test reports of CTs and PTs installed at plant used for gross energy generated and auxiliary consumption meters.*
- (6) *Documentary evidence for the critical equipment (i.e. Turbine and Generator) complying with relevant applicable IEC or CEA standards as your submitted test reports are not showing the evidence that the Turbine and Generator comply with IEC or CEA standards.*
- (7) *Report from Transco/Discom regarding provision of directional protection for generator feeder at Transco/Discom SS.*
- (8)
 - (a) *Fire safety certificate from Fire department.*
 - (b) *Latest documentary evidence towards payment of rent, Cess and Nala Tax to Irrigation division, Bhadrachalam as per the Lease Deed.*

Further, to the above, any other information if required after receipt of above documents will be sought, to enable State Agency to comply with requirements of the procedure for accreditation.

c. Letter dated 27.06.2016 of SLS:

“With reference to your ref letter point no-4 we bring to your notice for the difficulties to provide the CTs & PTs in all 6 Nos of generator units as well in 2 nos of auxiliary transformers, as the space accessibility to provide the said equipment in each station are highly not possible due to space constraints.

The provisions for 11 kV CTs & PTs and metering in our 11 kV group panel is possible to provide after the O/G breakers, that the supply which is going to 11kV/132 kV main transformers, so that the net energy can be measured and served the purpose, and can solve REC accreditation to SLS power corporation. Subsequently for the same provisions, prepared a drawing for your kind perusal.

Hence your kind attention is required based on our proposal and requesting your acceptance.

Soon after getting the acceptance from you, we can submit the test reports of net energy meters and CTs and PTs accordingly, as per the point no. 5(a) & (b) in your ref letter.”

d. Letter dated 12.08.2016 of SLDC:

“In the reference 5th, you submitted a drawing and mentioned that, you will provide 11 kV CTs and PTs and metering after the O/G breakers. Your proposal is accepted with the following conditions.

- The energy meters shall be 0.2s class ABT meters with 0.2s class, 5 VA CTs and 0.2 class, 10 VA PTs.
- Separate energy meters shall be provided for the measurement of energy generated from both 125 kVA and 62.5 kVA DG sets and the meters shall be sealed by Transco/Discom authorities as RECs will be given for the energy generated from RE sources only.

In addition to the above, you are requested to submit following pending documents requested by SLDC on 28.05.2015 within 7 working days of receipt of this letter, failing which your application will be rejected as per clauses 7.3 & 7.4 of “Model procedure/guidelines for accreditation of renewable energy generation project” approved by CERC dated 05.11.2015 which state that the State Agency may abandon the accreditation, if the applicant fails to furnish the information requested by the State Agency within 7 working days.

- (1) Resubmit the web application as per the enclosed web application with this letter.
- (2) Resubmit the declaration on 100/- Non-Judicial stamp paper by striking off non-related paras, as per the enclosed declaration with this letter.
- (3) Revised single line diagram approved by CE/OMC/Warangal Zone/TRANSCO showing metering arrangement at plant and substation including standby meter arrangement at 132 kV, Bhadrachalam as per the T.O.Os. cited in ref (2&3) and confirmation of metering arrangement at plant and substation end.
- (4) TRANSCO/EBC software compatibility certificates of Gross energy generated and auxiliary consumption meters at the plant.
- (5) (a) Test reports of gross energy generated and auxiliary consumption meters installed at the plant.
(b) Test reports of CTs and PTs installed at plant used for gross energy generated and auxiliary consumption meters
- (6) Documentary evidence for the critical equipment (i.e. Turbine and Generator) complying with relevant applicable IEC or CEA standards as your submitted test reports are not showing the evidence that the Turbine and Generator comply with IEC or CEA standards.

- (7) Report from Transco/Discom regarding provision of directional protection for generator feeder at Transco/Discom SS.
- (8) Income Tax PAN No: AJZPM5237F Photostat copy
- (9) Appointment of statutory auditor for the FY 2016-17
- (10) Copy of PPA with M/s Tata Power Trading Company, Mumbai.

e. Letter dated 19.08.2016 of SLS:

“As you are aware that, with reference to your letter for providing the CTs & PTs at our 11 kV O/G GT Breakers the duration of the time mentioned in the letter is inadequate to finish the work within 7 working days as per the conditions given hereunder:

1. *Drawing approval is needed from CE/OMC/Warangal Zone/Transco for installation of new CTs, PTs & Meters at our plant as per the sanctioning letter.*
2. *After getting the approval the procurement of the CTs, PTs & Meters are to be arranged as per the classes mentioned in the letter.*
3. *The meter equipment (CTs, PTs & Energy meters) are to be tested at NABL 3rd party before commissioning along with Transco/Discoms executives.*
4. *Installation and Commissioning of the equipment checking with Transco/Discom authorities.*
 - *In your reference letter point No.4 and 5 is not possible to submit as we expressed our inability to install the metering in all stations in our letter submitted on 27.07.2016*
 - *We can submit the test reports for the equipment for which we got the approval in the ref letter as per our request.*
 - *Rest of the documents mentioned in your ref letter dated 11.08.2016 i.e., point no. 1, 2, 6, 7, 8, 9, 10 have attached for your kind perusal.*

Hence, we are requesting you to extend the time period for three months for the completion and submission of documents after testing, installation and commissioning of the said equipments.

With reference to your letter mentioned above please find below details of documents attached.

| Sl. No. | Particulars | Remarks |
|----------------|---|----------------|
| 1 | Resubmit the web application as per the enclosed web application with this letter | Enclosed |
| 2 | Resubmit the declaration on 100/- Non-Judicial stamp paper by striking off non-related paras, as per the enclosed declaration with this letter. | Enclosed |
| 3 | Report from Transco/Discom regarding provision of directional protection for generator feeder at Transco/Discom SS. | Enclosed |
| 4 | Income Tax PAN No:AJZPM5237F Photostat copy | Enclosed |
| 5 | Appointment of statutory auditor for the FY 2015-16 | Enclosed |
| 6 | Copy of PPA with M/s Tata Power Trading Company, Mumbai | Enclosed |

| Sl. No. | Particulars | Remarks |
|---------|---|----------|
| 7 | Documentary evidence for the critical equipment (i.e., Turbine and Generator) complying with relevant applicable IEC or CEA standards | Enclosed |

Once again we request you to extend the time period for three month for the completion and submission of the documents for the above said equipments.

f. Letter dated 21.09.2016 of SLDC:

"In the reference 7th cited above, you had mentioned that installation of CTs & PTs at your 11 kV O/G GT Breakers will not be completed within 7 working days as per the conditions given hereunder:

1. *Drawing approval is needed from CE/OMC/Warangal zone/Transco for installation of new CTs, PTs & Meters at your plant.*
2. *After getting the approval the procurement of the CTs, PTs & Meters are to be arranged.*
3. *The meter equipment (CTs, PTs & Energy meters) are to be tested at NABL 3rd party before commissioning along with Transco/discoms executives.*
4. *Installation and Commissioning of the equipment checking with Transco/Discom authorities and requested this office to extend the time period for 3 months to submit the pending documents.*

Your request is accepted with the conditions mentioned in the reference 6th cited above and submission of following pending documents within three months, failing which your application will be rejected as per clauses 7.3 & 7.4 of "Model procedure/guidelines for accreditation of renewable energy generation project" approved by CERC dated 05.11.2015

- 1) *Web application after changing income tax Pan No from AJZPM523F to AAJCS5361G as the income tax PAN no shall be in the name of SLS Power Corporation Ltd (Remaining shall be same as submitted by you on 19.08.2016)*
- 2) *Revised single line diagram approved by CE/OMC/Warangal Zone/TRANSCO showing metering arrangement at plant and substation including standby meter arrangement at 132 kV, Bhadrachalam as per the T.O.Os. cited in ref (2&3) and confirmation of metering arrangement at plant and substation end.*
- 3) *TRANSCO/EBC software compatibility certificates of Net energy generated Meters installed at the plant.*
- 4) *Test reports of Net energy generated meters (with CTs & PTs) installed at the plant and auxiliary consumption meters installed at the plant.*
- 5) *Documentary evidence for the critical equipment (i.e. Turbine and Generator) complying with relevant applicable IEC or CEA standards as your submitted test reports are not showing the evidence that the Turbine and Generator comply with IEC or CEA standards.*

g. Letter dated 17.03.2017 of SLDC:

"This has reference to your application for accreditation, it is to inform that, as per the standing clearance/NOC (No Objection Certificate) issued by TSSLDC, your are allowed for injection 11.84 MW only into the grid.

Hence and as per the discussion held with NLDC, you are requested to submit the revised web application & revised declaration on company letter head after changing accreditation capacity from 24 MW to 11.84 MW and documentary evidence for payment of transmission charges from March 2016 to till date for further processing of your application. (for reference corrected declaration enclosed)."

6. The correspondence between the parties as extracted above has been placed before this Commission by the respondent along with its counter affidavit and during the course of hearing.

7. The issue that is for consideration in this petition is that -

'Whether the petitioner is entitled to accreditation of its project w.e.f. from 26.01.2014 to 28.10.2017 under the RPPO Regulations?'

8. The undisputed facts of this case as per the pleadings of both the parties are –

- a) Petitioner has established a 24 MW (6x4 MW) small hydro power plant at the left bank of the branch Anicut of River Godavari at Dummagudem Village & Mandal, Khammam District.
- b) Petitioner was granted a lease of 16 Ac of land by the then Government of Andhra Pradesh vide G.O.Ms.No.888 dated 17.07.2008.
- c) TRANSCO vide letter dated 02.01.2010 accorded revised scheme approval at an estimated cost of Rs.657.21 lakh for extension of 20 km of 132 kV DC/SC line from 132/33 kV Badhrachalam substation for evacuation of power from 24 MW Hydel Power Plant to be setup by the petitioner.
- d) Petitioner filed on 23.11.2012 an application No.APPLAPOACCR0810121652 dated 08.10.2012 with the State Agency (Respondent, TSSLDC) seeking accreditation certificate under Renewable Energy Certificate (REC) Mechanism for 24 MW capacity of its project.
- e) Petitioner's plant achieved synchronization with Transco grid on 07.12.2013 at 15:00 hours connected at 132 kV level at 132/33 kV Bhadrachalam substation and Commercial Operation Date (COD) was achieved on 26.01.2014.
- f) From January, 2014 onwards the joint meter readings of main, check and standby meters are being taken by the officials of the transmission licensee.
- g) The petitioner vide letter dated 24.04.2017 has again sought REC accreditation from the State Agency.
- h) The respondent vide letter dated 16.05.2017 informed the petitioner that its application of 11.84 MW capacity small hydro power plant had been rejected on the ground that "*Metering is not complied with as per the standards issued by CEA/CERC procedures.*"
- i) The petitioner once again on 04.07.2017 filed another application No.APPLTG0accr2606173013 with the State Agency will all documents required for grant of accreditation of 11.84 MW out of total 24 MW.

- j) The respondent vide letter dated 28.10.2017 has granted accreditation to the petitioner project from 28.10.2017 to 27.10.2022.
- k) The petitioner registered by NLDC under REC Mechanism on 30.11.2017.
- l) As per CERC, REC procedures the petitioner is eligible to avail RECs from, 01.12.2017 onwards.
- m) Respondent is sending the Energy Injection Reports (EIRs) of the petitioner's project to NLDC for issuance of RECs from the month of December, 2017 to till date.
- n) The petitioner filed a petition No.518/MP/2020 before CERC praying for grant of accreditation of the petitioner's project with effect from 26.01.2014 to 28.10.2017.
- o) CERC vide its order dated 05.09.2021 directed the petitioner to approach the appropriate forum as per liberty sought for resolution of disputes regarding accreditation duly permitting the petitioner to withdraw the petition and the petition is disposed of as withdrawn.
- p) The petitioner filed this petition before the Commission on 21.03.2022.

9. The Regulatory provisions relevant to the present case which were in force during the period for which relief is being sought by the petitioner through the present petition are as reproduced below:

- a) The clause 6 of "Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy/Renewable Energy Certificates) Regulation, 2012 [Regulation No.1 of 2012] notified on 21.03.2012 relevant in this case is reproduced below:

6. Eligibility and Registration for Certificates: -

A generating company [including a Captive Power Producer (CPP)] engaged in generation electricity from renewable energy sources shall be eligible for obtaining accreditation from the State Agency if it fulfils 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 at the pooled cost of power purchase, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.*

... ..

- c) *That in respect of CPP, it has not at all availed or does not at all propose to avail any benefit in the form of concessional/ promotional transmission or wheeling charges, banking facility and waiver of electricity duty.*

- b) The clause 2.1, 7.3 and 7.4 of "Model procedure/guidelines for accreditation of renewable energy generation project for REC mechanism by State Agency"

2.1 This procedure shall be applicable to all the generating companies engaged in generation of electricity from renewable

energy sources such as small hydro, wind, solar including its integration with combined cycle, biomass, bio fuel cogeneration, urban or municipal waste and such other sources as recognised or approved by Ministry of New and Renewable Energy for their Renewable Energy Power Projects subject to fulfilment of eligibility conditions for participating in REC mechanism on or after April 1, 2010 in accordance with the provisions stipulated under the CERC REC Regulations.

7.3 The Applicant shall furnish the details as requested by the State Agency within 7 working days so as to enable State Agency to undertake the accreditation of the generating facility.

7.4 In case the applicant fails to furnish the information requested by the State Agency within the stipulated time frame, the State Agency shall abandon the accreditation and retain the processing fees.

c) The definition of 'meter' as per CEA (Installation and Operation of Meters) Regulations, 2006 is –

2(1)(p) 'Meter' means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system and shall include, wherever applicable, other equipment such as Current Transformer (CT), Voltage Transformer (VT) or Capacitor Voltage Transformer (CVT) necessary for such purpose;

10. The petitioner small hydro power project has achieved COD on 26.01.2014. Since the petitioner is allowed to inject into the grid a maximum capacity of 11.84 MW only of their three (3) units out of six (6) units of 24 MW capacity, as per the No Objection Certificate (NOC) issued by TSSLDC, the petitioner has been selling power of 11.84 MW, to power exchange i.e., Indian Energy Exchange Limited (IEX) through the trader M/s Tata Power Trading Company Limited from 26.01.2014 onwards. As such, in terms of clause 6(b)(ii) of Regulation No.1 of 2012 read with clause 7.3 and 7.4 of "*Model procedure/guidelines for accreditation of renewable energy generation project for REC mechanism by State Agency*", the petitioner is eligible for registration for REC certificates i.e., for accreditation by State Agency (respondent) upon furnishing the details as requested by the State Agency within 7 working days, failing which the State Agency shall abandon the accreditation and retain the processing fees.

11. From the correspondence between the parties as extracted above, it is evident that respondent has made correspondence with the petitioner from 04.12.2014 onwards to March, 2017 duly informing them to submit the pending documents for further processing of their application as the petitioner has not submitted the required

documents. Lastly vide letter dated 21.09.2016 it was informed to submit the documents within 7 working days on receipt of the letter, failing which the application shall be rejected as per "Model procedure/guidelines for accreditation of renewable energy generation project" approved by CERC, which states that the State Agency may abandon the accreditation, if the applicant fails to furnish the information requested by the State Agency within 7 working days.

12. In fact, the petitioner on 27.06.2016 narrated the difficulties to comply with the metering requirements due to space constraints and requested for approval of alternate proposal. Further, on 19.08.2016 the petitioner itself has requested the State Agency for extension of time period for three (3) months for completion and submission of documents after testing, installation and commissioning of the metering equipment viz., CTs, PTs & Energy meters. Thus, the contention of the petitioner that there is no correspondence from the respondent from the date of COD is incorrect. Further, from the definition given in CEA (Installation and Operation of Meters) Regulations, 2006 the other equipment such as Current Transformer (CT), Voltage Transformer (VT) or Capacitor Voltage Transformer (CVT) also constitutes meter;

13. The respondent had clearly conveyed the requirements for granting accreditation and had been repeatedly seeking for certain documents from the petitioner and the petitioner was not able to comply despite the grant of additional three months time. Finally, the respondent in its letter dated 16.05.2017 had abandon the accreditation and stated as below:

"This has reference to your application for accreditation vide ref. (1) cited above, following is informed: Your application for accreditation of 11.84 MW capacity of your Small Hydro Power Plant is thoroughly examined and rejected on the grounds that "Metering is not complied with the standards issued by CEA (Central Electricity Authority)/CERC procedures".

14. After rejection of initial web application, the petitioner has submitted second web application on 04.07.2017 vide APPLTGOACCR2606173013 for accreditation which was accepted by the respondent on 28.10.2017. When perused first and second applications submitted by the petitioner for grant of accreditation along with the above detailed correspondence, many a short comings are noticed in the first application whcih are not only related to meter equipment but also, of documents and certifications related to metering and strictly non compliance of objections raised by the respondent.

15. According to the petitioner there was no occasion for change of meters at any point of time from the date of synchronization till date. It is the contention of the petitioner that the accreditation was granted by accepting the second web application and there were no new installations carried out and on the very same set of metering arrangements. It is further contended that the respondent had stated the reasons for refusal only upon filing of the petition, which amounts to improving its case than it was existing prior to filing of the petition. This is nothing but intended to defeat the prayer of the petitioner. In this regard, the petitioner has relied on a decision reported in 1978 (1) SCC 405 in the matter of "*Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others*". which state "*when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.*" The principle laid in this citation may not come to the rescue of the petitioner for the reason that the respondent herein has not made any improvements for the statement of rejection of first web application of the petitioner as mentioned in the rejection letter dated 16.05.2017 and the correspondence placed before the Commission by the respondent and of which the petitioner has not denied and has not whispered the reason of rejection mentioned in the letter dated 16.05.2017. Merely because the letter dated 16.05.2017 addressed by the respondent to the petitioner does not contain reasons for rejection of accreditation other than what has been mentioned in the letter does not mean the respondent made improvements post filing of the petition.

16. Undoubtedly, the petitioner is not selling power to the DISCOMs either through PPA mode or through pooled cost mode. It is not availing captive consumption and therefore also concessional wheeling etc. In the absence of all these things there was no difficulty in allowing accreditation to petitioner by the respondent had the petitioner complied the objections raised by the respondent strictly and in a timely manner and the respondent would have considered the first web application of the petitioner.

17. Nevertheless there was regular correspondence between the petitioner and the respondent regarding the meters to be installed along with the pending documents to be submitted to the respondent which the petitioner failed to comply and the respondent has rightly refused to grant accreditation for issuance of RECs for the

period 26.01.2014 to 28.10.2017 as per CERC approved REC procedures. Considering the material available on record and the submissions made by the parties, the petition fails for the lapses on the part of petitioner and for not complying the objections made by the respondent from time to time.

18. For the foregoing reasons, the petition is dismissed without costs.

This order is corrected and signed on this the 19th day of July, 2023.

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|---|---|--|
| Sd/- (BANDARU KRISHNAIAH) MEMBER | Sd/- (M. D. MANOHAR RAJU) MEMBER | Sd/- (T. SRIRANGA RAO) CHAIRMAN |
|---|---|--|

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