

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present: Shri S. P. Nanda, Chairperson
Shri S. P. Swain, Member
Shri A. K. Das, Member

Case No. 54/2014

M/s. Green Energy Association	Petitioner
-Vrs. -		
M/s. NALCO	Respondent

In the matter of: **An application under Ss.142 & 146 of the Electricity Act, 2003 read with Regulation 7 (1) and (2) of the OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010 for non-implementation of the order dated 21.11.2013 of the Commission passed in Case No. 21 of 2013.**

For Petitioner: Shri S. M. Algaus, Advocate.

For Respondent: Shri Manoj Kumar Mishra, Sr. Advocate,
 Shri M K Rajguru, Advocate,
 Shri Tanmay Mishra, Advocate.

Order

Date of hearing: 25.11.2014

Date of order: 11.08.2015

The present petition has been filed by M/s. Green Energy Association (hereinafter referred to as M/s. GEA) which is an association of non-conventional energy Generators. The Petitioner through this application seeks action under Section 142 and 149 of the Electricity Act, 2003 against Respondent M/s. NALCO for non-compliance of the order of the Commission in Case No. 21/2013 dated 21.11.2013 with regard to the OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010 (in short RPO Regulations). The Commission had earlier passed an order dated 21.11.2013 in Case No.21/2013 regarding non-compliance of OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010 (RCPO) by M/s. NALCO. The respondent M/s. NALCO was directed in that order to purchase RECs to fulfil its solar obligations under the provision of the said Regulation. The carrying forward of obligation of M/s. NALCO to the next year was neither accepted by the Commission nor it was allowed to adjust excess co-generation against shortfall in RPO.

2. The Learned Counsel appearing on behalf of the petitioner while submitting an elaborate report on availability RECs from April, 2012 to March, 2014 claimed that M/s. NALCO has misled the Commission by stating that Solar RECs were not available in the market from the year 2011-12 onwards. In fact Solar RECs were available in the market at the floor price. The Petitioner, therefore, has prayed inter alia for the following:
 - (a) to direct M/s. NALCO to comply with order dated 21.11.2013 passed in Case No. 21/2013, failing which action under Sections 142, 146 & 149 of the Electricity Act, 2003 should be taken against it ;
 - (b) award cost in favour of petitioner for these proceedings.
3. The Petitioner has brought to our notice that though M/s. NALCO has made a provision for Rs.19.59 Crs. as per its 32nd Annual Report towards fulfilment of renewable purchase obligation, it has not fulfilled the same. The Petitioner seeks imposition of penalty on M/s. NALCO similar in the line of UERC order for contravention of the direction of the Commission.
4. In its counter reply M/s. NALCO has prayed to the Commission for consideration of excess co-generation in the year for FY 2011-12 and FY 2012-13 to fulfil mandatory requirement of solar and non-solar obligations for the said financial years. It has also prayed for exemption of the said obligation in view of the judgments of the Hon'ble ATE passed in Appeal Nos.54/2012 and 59/2012.
5. Sr. Advocate appearing on behalf of M/s. NALCO has further submitted that during FY 2011-12 and FY 2012-13, M/s. NALCO has complied its Co-generation obligation against the target set by the Commission. The said Co-generation quantity met the total requirement of RPO obligation and therefore, M/s. NALCO is not liable to purchase RECs to meet their Solar obligation provided in the RPO Regulations. In order to meet non-solar RPO obligation for FY 2011-12, M/s. NALCO has purchased 30694 RECs out of the target 79769 and the balance non-solar RECs could not be purchased due to non-availability of the same in the market in spite of bidding. Since, the Hon'ble Apex Court has not granted any interim stay order in Civil Appeal Nos. 5466 & 5467 of 2013 of the Commission, the judgment of the Hon'ble ATE in case of M/s. VAL shall be binding also on the present Respondent. This is because M/s. NALCO is having similar operations and is covered under the said Judgment of the Hon'ble ATE. The Commission has completely misconstrued the provisions of

Section 86(1)(e) of the Electricity Act, 2003 as CPPs are otherwise outside the regulatory sphere of the OERC. Section 86(1)(b) of the Act, 2003 does not empower the Commission to bring M/s. NALCO within the scope of RPO for its compliance. The judgement of the Hon'ble ATE in Appeal No.53/2012 in case of M/s. Lloyd Metals Ltd. Vrs. MERC & others will not be applicable to M/s. NALCO as it being a Captive Generating Plant. In view of the judgment dated 01.10.2014 of the Hon'ble ATE in Appeal Nos.112, 130 & 136 of 2014 (M/s. India Glycols Ltd. Vrs. UERC) M/s. NALCO be absolved from its obligation to purchase REC to fulfil its RPO.

6. The Respondent further submitted that in view of the Interim stay order granted by Hon'ble High Court of Orissa on the OERC (RCPO) Regulations, 2010 in case of M/s. Hindalco Industries Ltd. (W.P.C No. 5243 of 2012) and in case of M/s. Vedanta Aluminium Ltd. (W.P.C No.5515 of 2013) the order dated 21.11.2013 of the Commission passed in Case No.21 of 2013 needs to be reviewed. Therefore, M/s. NALCO is not liable for non-compliance of RPO and for the actions as sought by the petitioner.
7. Heard the parties at length. The Commission has recently passed an order in Case No. 59/2014 dated 07.08.2015. The said order has answered all the following issues raised by the Respondent M/s. NALCO in this case.
 - (a) The jurisdiction of the Commission to bring industries having Captive Generating Plants under OERC (RCPO) Regulations, 2010.
 - (b) The obligation of industries to purchase renewable energy who are presently meeting their power requirement from fossil fuel based co-generation plants.

The Commission in the said order in Para 22 has directed as follows:

- a. *The reasons advanced by parties for non-fulfilment of RPO obligation are unjustified and Commission is not inclined to grant any exception on this matter.*
- b. *The obligated entities are allowed to carry over their renewable and co-generation purchase obligation upto 31.03.2015 till 31.08.2016. If they do not purchase the obligated quantity of power they can purchase REC at least 5% per month of the obligation upto 31.03.2015 from August, 2015 onwards and must comply the arrear obligation in full by 31.08.2016. No further extension of time shall be granted to carry forward the renewable purchase obligation in any circumstance.*

- c. All the obligated entities shall submit compliance report quarterly to OREDA within the above time frame. OREDA shall also submit the quarterly compliance report to the Commission after due scrutiny.*
- d. All obligated entities mentioned in the RCPO Regulations, 2010 shall comply with the said Regulations henceforth.*
8. The above order of the Commission shall be applicable mutatis mutandis to present case also. This order supersedes all other previous orders issued by the Commission in this regard.
9. With the above observations, the present application is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson