

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. 09/2014

M/s. NALCO	Petitioner
Vrs.		
Chief Executive OREDA & Another	Respondents

In the matter of: **An application u/S. 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 for review and amendment of the order dated 21.11.2013 of the OERC passed in Case No. 21/2013.**

For Petitioner: Shri. Manoj Kumar Mishra, Sr. Advocate and Shri. M K Rajguru, Advocate.

For Respondents: Ms. Sujata Das, Verifier, OREDA,
No body is present on behalf of GRIDCO Ltd.

Order

Date of hearing: 25.11.2014

Date of order: 15.07.2015

The Commission had passed an order in Case No.21/2013 dated 21.11.2013 regarding compliance of Renewable and Co-generation Purchase Obligation (RCPO) by NALCO in terms of OERC (RCPO & its compliance) Regulations, 2010. In the present case the petitioner NALCO has sought to review the above order of the Commission which has been registered as Case No.9/2014.

2. The present Petitioner has pointed out that the observation of the Commission in the said order that Hon'ble APTEL's judgement in Appeal No. 54/2012 dated 30.01.2013 (M/s. Emami vrs. OERC and Others) and judgement in Appeal No. 59/2012 dated 31.03.2013 (M/s. Vedanta Aluminium Vrs. OERC & Others) apply to the Petitioners in those cases only is an error apparent on the face of the record in as much as M/s. VAL and M/s. NALCO have absolutely identical operation, namely, conventional coal based CGP as well as co-generation CGP.
3. The Petitioner further submitted that in WP(C) No. 5243/2012 dated 12.04.2012 Hon'ble High Court of Orissa has granted stay of the OERC (RCPO and its Compliance) Regulations, 2010 notified by the Commission on 30.09.2010. The assumption of jurisdiction under such stayed notification is an error. Therefore, the

Petitioner prays before the Commission for waiver / exemption of the renewable and co-generation purchase obligation for the year 2011-12 and 2012-13 as the appellant has fulfilled its total RCPO obligation under OERC (RCPO and its Compliance) Regulations, 2010.

4. NALCO further submitted that it has purchased 30694 nos. of non-solar RECs against the target of 79769 for meeting its obligation for FY 2011-12 due to non-availability of the same in the market in spite of bidding. NALCO has already prayed the Commission for waiver of Solar Purchase Obligation and carry forward the balance non-solar RPO of 2011-12 to next year. The Commission has completely misconstrued the provisions of Section 86 (1) (e) of the Electricity Act which could only mean the electricity consumed in the area of supply of the distribution licensee as is distributed by that licensee and can't include Captive Power Plant simply because they are physically located within the area of a distribution licensee.
5. OREDA as respondent in its submission has mentioned not to allow NALCO to absolve it from its obligation on the ground of excess consumption of Co-generation power. OREDA has further submitted that in view of the Section 86(1)(e) of the Electricity Act, Cogeneration should be interpreted as cogeneration from renewable source of Energy. The prayer of NALCO for applicability of order of Hon'ble ATE in Appeal No.59/2012 may be subject to the verdict of Hon'ble Supreme Court in the matter. The Hindalco Industries Ltd. And Vedant Aluminium Ltd. Cases in High Court are specific cases and not applicable to NALCO.
6. OREDA has further brought to the notice of the Commission that NALCO had never purchased any excess non-solar RECs during 2011-12. NALCO purchased total of 30694 RECs which is far below their obligated number of RECs of 7790382 nos. @ 1.2% of the consumption resulting in a shortfall of 4721382 non-solar RECs. NALCO therefore needs to be penalised for such non-compliance under Section 142 of the Act.
7. OREDA also stated that NALCO has made untrue statements that it could not purchase balance RECs for FY 2011-12 due to non-availability of non-solar RECs. OREDA has submitted a REC inventory report of FY 2011-12 showing availability of REC in the Exchanges.
8. In the meantime the counsel on behalf of NALCO submitted that OREDA insists NALCO to comply with the OERC (RCPO) Regulation in view of order dt.21.11.2013 passed in Case No.21/2013 invoking the provisions under Section 142 of the Electricity Act, 2003.

9. We have gone through all the records and documents at hand and considered all the submissions written and oral. Commission has considered all such documents and order of Hon'ble ATE and we therefore find no new facts, errors and any other additional materials to review our order dt.21.11.2013.

It is well settled principle that a review can only be made on the following grounds:

- (i) As per Section 94(1) (f) of the Electricity Act, 2003, this Commission has the same power as are vested with the Civil Court under the Code of Civil Procedure, 1908 in respect of reviewing its decisions, directions and orders among others.
- (ii) As per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on the following grounds:
 - (a) Error apparent on the face of the record;
 - (b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;
 - (c) Any other sufficient reason.
- (iii) Error contemplated under the rule must be such which is apparent on the face of the record and not an error which is to be fished out and searched. It must be an error of inadvertence.
- (iv) We are citing two important decisions here. *"Error apparent on the face of the record" must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.* (AIR 1995 SC 455).

That no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. ('Batak K. Vyas vrs. Surat Borough Municipality,' AIR 1953 Bombay 133 (R)).

10. The error as pointed out by the Petitioner seeking the review of our judgement is merely reiterating the facts of the original petition. There is no new material evidence to review our order. It has become almost an everyday experience that review applications are filed mechanically as a matter of routine and there is no indication as to which grounds strictly it falls with the narrow limits of Order 47 Rule 1 of the Code

of Civil Procedure, 1908. The present petition appears more to be an appeal than prayer to review our Order.

11. The Hon'ble Supreme Court in *Ajit Kumar Rath vrs. State of Orissa* (1999) 9 SCC 596 has held that the expression "any other sufficient reason" used in order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. In the instant case the Petitioner has also not been able to show the 'sufficient reason' which are analogous to those of the rules.
12. The Commission while passing the order in case No.21/2013 dt.21.11.2013 had considered all the orders of Hon'ble ATE as stated by the Petitioner NALCO and observed that the order of the Hon'ble ATE applies to the petitioner in those cases only. Moreover, the impact of decision of the Hon'ble ATE in the above cited cases have far reaching consequences involving almost all the captive co-generation plants of the state and objective of promotion of non-renewable energies in the country as a whole. Therefore, the Commission has preferred an appeal for wider deliberation and interpretation before the Hon'ble APEX Court in Civil Appeal No. 5466-67/2013 and so as to give effect to the order of Hon'ble ATE in general in the mentioned cases. The decision of Hon'ble APEX Court automatically becomes binding on all parties. The Commission, therefore, is of the opinion that such judgements of Hon'ble ATE are not applicable to NALCO at present and decided accordingly.
13. NALCO in its reply has stated it could not fully fulfil its non-solar obligation for 2011-12 due to non availability of non-solar RECs in the market place. OREDA in its reply has contradicted such submission of NALCO regarding availability of non-solar RECs in exchanges for 2011-12 and filed an REC inventory report of FY 2011-12.

The Commission therefore needs to be satisfied regarding such claims and counter claims to ascertain if any culpability exists against NALCO.
14. Since the present petition of NALCO fails to satisfy any of those conditions required for review of the order we are not inclined to review of our order dtd.21.11.2013 passed in Case No.21/2013. Accordingly the review petition filed by NALCO is disposed of and we direct NALCO to comply with our order dated 21.11.2013 within a month's time from the date of issue of this order.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson