

**ODISHA ELECTRICITY REGULATORY COMMISSION
BUDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751021**

Present: **Shri U. N. Behera, Chairperson**
 Shri S. K. Parhi, Member
 Shri G. Mohapatra, Member

Case No. 19/2019

M/s. CCPPO	Petitioner
Vrs.		
OREDA & another	Respondents

In the matter of: **An application under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business Regulations, 2004 for review/modification of Order dated 09.04.2019 passed by the Commission in Case No. 89 of 2017.**

For Petitioner: Shri H. R. Das, Secretary, CCPPO.

For Respondent: Shri Ashok Kumar Choudhury, Jt. Director, OREDA.

ORDER

Date of Hearing: 27.04.2021

Date of Order: 16.06.2021

1. This petition has been filed by CCPPO (Confederation of Captive Power Plants Orissa) for review/modification of the Commission's Order dated 09.04.2019 passed in Case No. 89/2017. The Petitioner has also made a prayer to stay the operation of the impugned Order pending adjudication of the present application and expeditiously initiate the proceedings for amendment of the existing RPO regulation namely OERC (Procurement of energy from Renewable Sources and its Compliance) Regulations, 2015.
2. The petitioner, being aggrieved by the said Order of the Commission, enumerated the following grounds of the present petition for review of the Order:
 - a. The Commission failed to consider the *bonafide* reasons given by the Petitioner in his pleadings and/or arguments for the failure of its Member Industries to comply the RPO target.
 - b. The Commission failed to consider the directions of the Ministry of Power (MoP) in the notification dated 1st February, 2019 which was within the

knowledge of the Commission before passing of the impugned Order leading to error having not taken into account the material available on record.

- c. The Commission failed to exercise its power judicially under Regulation 4.2 & Regulation 12.7 of OERC (Renewable Purchase Obligation and its Compliance) Regulation, 2015, which reads as follows:

“Regulation 4.2:

xxx xxx xxx Provided that depending upon the progress of development of Renewable Energy Sources in the State, the Commission may revise the RPO percentage suitably by an Order”;

“Regulation 12.7:

The Commission for reason to be recorded in writing, may relax any of the provision of these regulations on its own motion or on an application made before it by an interested person”.

- d. The Commission failed to appreciate the facts that there has been no remarkable development in renewable energy in the state of Odisha, for which the Industries having CPPs are not able to meet the RPO target fixed by the OERC.
- e. The Commission while deciding the issue has not dealt with the MoP notification dated 01.02.2019 which is more relevant and squarely applicable in the present issue. Therefore, the impugned Order is liable to be reviewed/ modified for the interest of justice.
- f. It is settled principle of law that the Review Petition is maintainable when a new and important evidence is discovered by the Applicant and he/she was not aware or due to negligence not able to provide the evidence on or before passing of the Judgment/ Decree/ Order.
- g. The power of review is readily available with the Commission when there is an error apparent on the face of the record. An error apparent on the face of the record can't be defined precisely and it has to be decided judicially on the facts of each case and the misconception of the Court can be regarded as the sufficient ground for review of the Judgment/ Order. The error apparent on the face of record was due to direction to CPPs by the Commission to comply with the cumulative RPOs upto 31.03.2018 by 31.03.2019 but the Order was finally communicated on 09.04.2019 leaving no room for the member industries of the Petitioner Confederation to comply with the Order.

- h. The Commission was already aware of the aforesaid direction of MoP dated 01.02.2019 as regards to RPO which was duly communicated to the Secretary of the Commission much prior to the pronouncement of the impugned Order but the Commission has not taken the said direction for consideration while deciding the present case for which the impugned Order is liable to be reviewed/ modified on this score alone.
- i. The notification of the MoP dated 01.02.2019 relating to RPO has an overbearing impact on the financial health of CPPs and its associated Industry / Industries and hence the impugned Order is liable to be interfered with for proper adjudication in the matter.
- j. The CPPs in the State are constrained to purchase RECs in absence of adequate availability of Renewable Power in the State. It is submitted that the certificate cost adds to the cost of power generation, which in turn makes the product less competitive. Therefore, a proper and reasonable Order in this regard is required to be passed for the interest of all the CPPs as a whole and for which the same is liable to be reviewed/ modified.
- k. In case the CPPs procure renewable power, then they should be allowed Open Access permission for simultaneous import/ export of power and no procedural hurdle should be raised by SLDC. Further, industries with conventional CPPs are forced to put up additional Renewable capacity and thus, underutilizing the existing Thermal capacity.
- l. Hon'ble APTEL's decisions in the matter of M/s. JSW Steel Ltd Vs TNERC and M/s. Ultratech Cement Ltd Vs. KERC may be referred to where the Tribunal has stated that RPO cannot be imposed on a person consuming electricity from cogeneration sources (irrespective of the nature of fuel used).
- m. The Commission has permitted exemption to those CPPs, who have already approached the Hon'ble High Court of Orissa, Cuttack to meet the cumulative obligations upto 31.03.2018 by 31.03.2019. The impugned Order is, therefore, applicable and binding on the CPPs who are yet to approach the Hon'ble High Court of Orissa for which the said CPPs will suffer irreparable losses and damages and thereby they will bear heavy financial loss for no fault of them.

- n. The Commission's direction to OREDA to compute the cumulative RPO obligation upto 31.03.2018, to determine the penal amount in case of default and to intimate the defaulter for deposit of the amount specifying the time period is otherwise bad in law and the same is liable to be interfered with.
3. The Respondent EIC (Electricity)-cum-PCEI, Odisha has offered no observations in his comments on the said petition of CCPPO.
4. OREDA has stated that the grievance of the Petitioner with regards to the Commission's Order dated 09.04.2019 are absolutely out of context. The prayer in the original petition (Case No. 89/2017) was for allowing carry forward of the compliance requirement to next financial year, i.e., 2018-19 which was permitted by the Commission in that Order.
5. OREDA further stated that letter of MoP dated 01.02.2019 clarifying RPOs of CPPs to be pegged at the RPO level applicable in the year of commissioning of the CPPs opens up entirely new premises and hence need separate deliberation.
6. Heard the parties. Their written notes of submission are taken into record. The Commission observed that in its review petition, the Petitioner has sought relief on two accounts: a) to stay the operation of this Order; and b) to initiate expeditious proceedings for amendment of the existing OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015. The Petitioner has sought review on the ground of notifications dated 01.02.2019 and dated 01.10.2019 of the Ministry of Power, Govt. of India regarding clarification on RPO for CPPs.
7. Regarding the notification dt. 01.02.2019 issued by the Ministry of Power, Govt. of India on the matter of RPO compliance by CPPs, we observe that the issue was not raised by any party during the hearing in Case No. 89 of 2017. Further, there was no clarity on the abovementioned notification of the Ministry of Power before passing the impugned Order. However, Ministry of Power, Govt. of India in its subsequent notification dt. 01.10.2019 have issued clarification to notification dated 01.02.2019 in the following manner:
- “3. *Based on the concern raised by various stakeholders and after due consultation with MNRE, CEA and CERC it is clarified that*
- i) *For CPPs commissioned before 1.04.2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1.04.2016 onwards, the RPO level as*

mandated by the appropriate Commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.

- ii) In case of any augmentation in the capacity, the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.*
- iii) In case, for meeting the RPO obligation, CPP has surplus power than its consumption requirement, such a CPP may sell its surplus power to the DISCOMs under the prevailing arrangements or in the power exchange.”*

8. Accordingly, the Commission in its notification No. OERC/RA/RE-5/2013 dt. 31.12.2019 in exercising powers under OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015, had addressed the matter and directed as follows:

- “(i) The CGPs which are commissioned before 01.04.2016, the RPO for them shall be pegged as prescribed in the above Regulation for FY 2015-16 and shall be as follows:*

<i>Solar sources (%)</i>	<i>Non-Solar sources (%)</i>	<i>Total (%)</i>
<i>0.50</i>	<i>2.50</i>	<i>3.00</i>

- (ii) For CGPs commissioned from 01.04.2016 onwards, the RPO shall be pegged at the level of the year of commissioning as mandated by the OERC under OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulations, 2015.*
- (iii) In case of any augmentation in the capacity of the CGP, the RPO for augmented capacity shall be pegged at a level prescribed by OERC for the year in which such augmented capacity is commissioned.*
- (iv) While meeting the RPO, if CGP has surplus power than its consumption requirement, then such a CGP may sell its surplus power to the DISCOMs/GRIDCO under the prevailing arrangements or to any other consumer.”*

9. Further, OERC has issued draft OERC (Procurement of energy from Renewable Sources and its Compliance) Regulations, 2021 inviting suggestions/objections from the stakeholders replacing old Regulation of 2015.

10. The Commission observed that as per the provision of the Electricity Act, 2003, for reviewing its decisions, the Commission acts as a Civil Court, where the provisions of Civil Procedure Code, 1908 become applicable. As per Order 47 Rule-1 of CPC, 1908, review can be made under the following cases:

- (i) Upon discovery of new and important matter or evidence, which could not be produced during the time passage of an Order, despite due diligence;

- (ii) If there is a mistake or error apparent on the face of record;
 - (iii) Any other sufficient reason, as per the discretion of the Court.
11. But none of the above provision is applicable here. The present petition appears to be an appeal to get exemption from RPO compliance than a review petition. In view of the above, the Commission feels that now there is no need for review of the impugned Order.
12. The case is accordingly disposed off.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson