
3. The brief facts of the case are that the petitioner owns a factory engaged in manufacture of refractory bricks and materials situated at Lathikata in the District of Sundargarh. The unit is a Power Intensive factory, and the applicant is a consumer under the opposite party having executed an agreement with the erstwhile OSEB on 13.10.1981, for supply of electricity to the Lathikata unit of the applicant with a contract demand of 2700 KW/3000 KVA. The agreement in question has continued to remain in force even till date.
4. However on account of prolonged adverse industrial relation in Lathikata unit during February 2000, the management was forced to declare 'lockout' of the unit with effect from 24.02.2000. The applicant then sought permission from opposite party i.e. Executive Engineer, Rourkela to draw reduced supply of 350 KVA instead of 3000 KVA, during the period of lockout, vide its letter dated 28.02.2000. Such request having been rejected, by the Executive Engineer, the matter was referred to the Superintending Engineer, and ultimately the request of the applicant to reduce contract demand was rejected. The designated authority having rejected the request, a further representation was made by the applicant to the Chief Executive Officer, of the opposite party company stating all relevant facts with a request for revising the energy charge for relevant period on the basis of reduced contract demand. The said representation had been submitted by the petitioner specifically invoking the provisions contained in Regulation 66 (1) of Distribution Code, 1998. However the aforesaid representation had been rejected by the opposite company, on the ground that reduction of contract demand as sought for is not within the provisions of the Distribution Code, 1998.
5. Hence the applicant has approached the Commission for holding the impugned order dated 11.07.2000 passed by the opposite party license as illegal and for directing the said licensee to revise the demand charges raised against the applicant – consumer for the relevant period by computing the same on the basis of reduced contract demand as prayed for.
6. The applicant is a consumer under M/s WESCO and is availing power supply regularly for running the mill. On 24.02.2000 notice for lockout was issued by the

applicant -company with effect from 24.02.2000 to different authorities, but not to the electrical authority. On 28.02.2000, the applicant company informed the Executive Engineer, Rourkela Electrical Division, that the applicant be permitted to reduce the supply to 350 KVA in view of the 'lockout' in the factory since 24.02.2000 under Regulation 109 of the Distribution Code, 1998. After rejection of the said application by different authorities, the present application has been filed by the petitioner before the Commission, challenging the order of rejection. The applicant management has lifted the lockout w.e.f. 25.03.2000.

7. It is argued by opposite party, that Clause 109 of the Distribution Code, 1998, has no application in the instant case, as the factory has not been destroyed or damaged, due to lockout, rendering it unfit for occupation or use. The applicant is also not entitled to get any benefit of reduction as per Regulation 66(1) of the Distribution Code, 1998. Regulation 68 of the Code provides that every application for reduction of contract demand under Regulation 66 (1) shall be accompanied by (a) such processing fee as may be notified by the licensee for the particular category of consumer (b) Test report from the licensed contractor where alteration of the installation is involved (c) Meter Reading of previous three months (d) letter of approval of Electrical Inspector. In the present case along with the application for reduction, the particulars as stated above have not been submitted to consider the application for reduction. Nor has the application for reduction been submitted in prescribed form. When the application was submitted for consideration of the case under Regulation 109 of the Distribution Code, 1998, the question of consideration of the application under Regulation 66 of the above Code does not arise. Otherwise also, the consumer has not fulfilled the conditions as prescribed under Regulation 68 of the Distribution Code to consider the application for reduction if any, as mentioned in Regulation 66(1) of the Distribution Code. In such view of the matter, the question of extending the benefit of reduction of contract demand to the petitioner under Regulation 66(1) of the code does not arise.

8. We have heard the argument of the advocates of both the parties at length. In order to appreciate the matter fully it is necessary to refer to the provisions of

Regulation 109 and Regulation 66(1) of the Distribution Code, 1998. Regulation 109 of the Distribution Code, 1998 read as follows.

“ If at any time during the continuance of the agreement between the licensee and the consumer, the plant or premises of the consumer is destroyed or damaged due to force majeure conditions referred to in Regulation 106 resulting in breakdown or rendering the plant or the premises wholly or substantially unfit for occupation or use, the consumer may on giving seven days' notice in writing to the engineer of such breakdown or unfitness take a reduced supply of power as may be necessary and feasible in such a contingency, he shall not be liable to pay the charges in accordance with the agreement, but he shall pay minimum monthly charges, demand charges where such charges are payable on the basis of the maximum demand recorded in the demand meter and energy charges on the basis of actual energy consumed. The aforesaid period of reduced supply shall not count towards the initial period specified in the agreement and the period of the agreement shall be extended for a further period equal to the period of reduced supply.”

9. The provisions of clause 109 gives an opportunity to a consumer whose plant or premises is damaged by force majeure conditions to be exempted from payment with reference to contracted load on giving a seven days notice. It implies a few propositions. The plant must be damaged due to force majeure conditions as indicated in Regulation 106. Secondly, such damage does not make it possible to utilise power to the full extent of the contractual load. Thirdly, the consumer gives a seven days notice in writing to the engineer of such breakdown or unfitness. In the event of happening of these three propositions, a consumer will be allowed to pay charges on the basis of maximum demand recorded in the demand meter and on the basis of actual energy consumed and there shall be no linkage to the contracted load. The provisions and propositions as indicated above are not applicable in the facts of the present case. Closing down the factory has been a deliberate decision. There has been no damage to the plant so as to make it wholly or substantially unfit for occupation or use and hence Regulation 106 is not applicable. It is unfortunate that the consumer suffered financial loss due to

industrial unrest and consequently lock out. But he cannot expect the electricity Distribution Company to share the financial loss or even mitigate his financial hardship. In fact in its letter dated 12th April 2000 the company has written to the Executive Engineer that it is unable to clear the bills due to financial crunch. Such an eventuality cannot come within the scope of Regulation 106. To conclude this point, it is clear that the inability to avail of power supply from the plant is due to industrial unrest and the application was on ground of financial crunch. In the circumstances, Regulation 106 is not applicable.

10. Reduction of contract demand as envisaged in Regulation 66(1) of Distribution Code is also not applicable in the instant case. It is mandatory to follow a definite procedure for reduction of contract demand. The provisions of Section 66 to 71 of the Regulation have to guide the decision with regard to reduction of contract demand. Specified details as required in Regulation 67 and 68 have to be given and before agreeing to reduce the contract demand it may be necessary to obtain a commitment from the consumer to bear the financial burden of the stranded cost of the licensee arising due to reduction of contract demand. Further, reduction of contract demand can be permitted only once within a period of 36 months and therefore once the reduction is granted a consumer cannot avail of the original contracted load thereafter within a period of 36 months. Therefore the facility of reduction of contract demand is available in cases where due to various factors, the consumer is not interested in getting the full contracted load and would like to reduce the contractual quantum. The provisions of Regulation do not permit a consumer to seek reduction of contractual demand on and off at his convenience. Moreover, a definite procedure has to be followed with reduction of quantum demand. This procedure has not been followed by the applicant and all required information has not been given while requesting for reduction of quantum demand under Regulation 66(1) of the OERC Distribution (Conditions of Supply) Code, 1998.
11. It has to be clarified that Regulation 106 does not refer to reduction of contract demand but to payment to reduced demand charges during the period in which the plant or premises remains damaged during force majeure conditions. Regulations

66 to 71 relate to reduction of contract demand. The consumer in the instant case is neither eligible for reduction of contract demand under Regulation 66 nor eligible to pay reduced charges under Regulation 106.

12. The licensee cannot be faulted for deciding that Regulation 106 was not applicable in the facts of the case. The consumer was not entitled to claim any concession in payment. It is obvious that the licensee cannot be expected to waive any portion of its dues only because the company has been put into financial loss as a result of its own managerial problem.
13. In view of the facts stated above we find that there is no infirmity in the action of the licensee either in refusing to reduce the contract demand or in refusing concessional treatment under provisions of Regulation 106 of OERC Distribution (Conditions of Supply) Code, 1998.
14. Accordingly the award goes in favour of the licensee and against the claim of M/s Orissa Industries Ltd., At/Po. Lathikata, Dist. Sundargarh .

Sd/-(H.S. SAHU)
MEMBER

Sd/- (D.K. ROY)
CHAIRMAN