

**ORISSA ELECTRICITY REGULATORY COMMISSION**  
**BIDYUT NIYAMAK BHAWAN**  
**UNIT-VIII, BHUBANESWAR-751 012**  
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**Present :      Shri D.K.Roy, Chairman**  
**Shri H.S. Sahu, Member**

**Case No.34 of 2000**

M/s Central Electricity Supply Co. of Orissa Ltd.,  
Bhubaneswar. .... **Petitioner**

- Vrs. -

- 1) M/s Grid Corporation of Orissa Ltd.  
2) M/s National Aluminium Company Ltd. .... **Respondents**

M/s Indian Charge Chrome Ltd. (ICCL) .... **Affected Party**

For Petitioner : Mr. L. Pangari, Advocate  
For Respondent No.1 : Mr. N.C. Panigrahi, Advocate  
For Respondent No.2 : Mr. Indrajeet Mohanty, Advocate

**Case No.26 of 2001**

M/s Southern Electricity Supply Co. of Orissa Ltd.,  
Berhampur, Dist. Ganjam. .... **Petitioner**

- Vrs. -

- 1) M/s Grid Corporation of Orissa Ltd.  
2) M/s Indian Metals & Ferro Alloys Ltd. .... **Respondents**

For Petitioner : Mr. M.K. Mohapatra, Advocate  
For Respondent No.1 : Mr. N.C. Panigrahi, Advocate  
For Respondent No.2 : Ms. A. Dutt, Advocate

**Case No.27 of 2001**

M/s Southern Electricity Supply Co. of Orissa Ltd.,  
Berhampur, Dist. Ganjam.

.... **Petitioner**

- Vrs. -

- 1) M/s Grid Corporation of Orissa Ltd.
- 2) M/s National Aluminium Company Ltd.

..... **Respondents**

For Petitioner : Mr. M.K. Mohapatra, Advocate  
For Respondent No.1 : Mr. N.C. Panigrahi, Advocate  
For Respondent No.2 : Ms. Indrajeet Mohanty, Advocate

**Date of argument :** 24.07.2001

**Date of Order :** 31.07.2001

**ORDER**

1. The proceeding arose out of an application filed by CESCO for issuance of directions to GRIDCO not to sell power to NALCO and restrain GRIDCO to raise any bills pursuant to the same and applications filed by SOUTHCO for issuance of necessary directions to GRIDCO not to sell power to Indian Metals and Ferro Alloys Ltd. at Theruvali and NALCO's Plant at Damanjodi and restraining GRIDCO to raise electric bills against IMFA Ltd. and NALCO respectively. All the disputes were raised with a prayer for resorting to arbitration as provided under Sec.37 of the OER Act, 1995. The Commission decided at the outset that the issue would be adjudicated straightway by the Commission instead of nominating an arbitrator.
  - 1.1 As all these applications raised common issues, they are being combined and disposed in this single judgment.

2. CESCO the petitioner in Case No.34/4000 has submitted that, with the coming into force of the Orissa Electricity Reform Act, 1995 and especially on and after 26<sup>th</sup> November, 1998, when the Orissa Electricity Reforms (Transfer of Assets, Liabilities, Proceedings and Personnel of GRIDCO to Distribution Companies) Rules, 1998 was notified, GRIDCO relinquished its right of distribution and supply of electricity in favour of four distribution companies, namely CESCO, WESCO, SOUTHCO and NESCO. Further OERC by order dt.31.03.99 granted an exclusive license to CESCO to distribute electricity within a specified area for retail supply to end users/consumers. Pursuant to "The Orissa Distribution and Retail Supply License, 1999, CESCO acquired exclusive right of distribution and retail supply of electricity within the Central Zone. NALCO's Captive Power Plant is located under Central Zone. After 01.04.99, GRIDCO who earlier was the sole Transmitting and Distributing agency, controlling both the purchase and sale of electricity within the State of Orissa gave up its right to sell power in favour of the four Distribution Companies, CESCO, WESCO, SOUTHCO & NESCO, who in turn acquired the exclusive right to sell power within their specified area for retail supply to end users/consumers.

2.1 However, until 30.08.99, GRIDCO continued to own all interest in CESCO. After 01.09.99, when GRIDCO divested its interest in CESCO, AES Orissa Distribution Private Ltd., acquired 51% stake in CESCO, the balance being held by GRIDCO. Thus for all practical purposes, the exclusive right to provide retail supply to end users/consumers within the Central Zone is held by the private company namely CESCO, without any direct or indirect control of GRIDCO.

- 2.2 CESCO further submits that, even though, the CPP of NALCO at Angul falls within the licensed area of CESCO, GRIDCO has persisted with providing power to NALCO and is raising bills and receiving payments after 01.04.99. Even though, this has been objected to by CESCO, GRIDCO has not paid any need to it. NALCO has also refused to accept CESCO as the license for retail supply of power. GRIDCO has earlier admitted that EHT consumers are consumers of DISTCOS, even though they are connected to the Transmission system.
- 2.3 In view of the above, CESCO has prayed that the Commission may be pleased to pass a direction to GRIDCO not to sell power to NALCO and raise bills pursuant thereto and further credit to account of CESCO for all the amounts already recovered from NALCO w.e.f. 01.09.99.
3. Replying to the above, GRIDCO has submitted that NALCO is not a consumer as per the definition mentioned in the license and is rather a valued supplier of electricity from their CPP at Angul. The inadvertent draw by NALCO CPP is an inherent part of Grid system for its stability.
- 3.1 GRIDCO has submitted that, as per the definition contained in Orissa Distribution and Retail Supply License, 1999 issued by the Commission, "Retail Supply" means the provision of electricity to consumers and "Consumer" means the end or final user of electricity supplied by Distribution and Retail Supply Licensee. The Commission, in case No.21/98 vide their order dt.30.03.99, has accepted the

suggestions of GRIDCO for changing the word consumer to "End user" for the person taking supply from Distribution and Retail Supply Licensee. This change has become necessary because EHT consumers will remain consumers of Distribution companies although they will be connected to the Transmission system. In view of the above, NALCO is not the end user of electricity from the Distribution and Retail Supply Licensee.

- 3.2 GRIDCO has further submitted that NALCO has set up a Captive Power Plant at Angul having six units of 120 MW each and has started commercial production since September, 1986. After meeting the Auxiliary consumption for generation of power, demand of Captive Loads at Angul and Damanjodi and the wheeling loss of the Transmission system, NALCO is supplying surplus power to the State Grid. It sometimes draws inadvertent power from GRIDCO. During the period of last 14½ years from the commencement of commercial generation of power from NALCO CPP, NALCO made a gross injection of 11877 MU of its surplus power to the State grid, where it has drawn inadvertent power of 200.751 MU from the State Grid which comes to 1.69% only. Hence NALCO is a valued supplier of power to grid and not an end consumer as specified by CESCO. Supply of power by NALCO to GRIDCO is regular but drawl of inadvertent power by NALCO from GRIDCO is rare and occasional and GRIDCO is adopting the cost of power and transmission charges as approved by OERC from time to time.

- 3.3 In view of the above, GRIDCO has submitted that NALCO is not a consumer, rather a valued supplier of electricity from their CPP at Angul. The inadvertent

drawl of power by CPP of NALCO is an inherent part of the Grid system for its stability and therefore the petition filed by CESCO may be rejected.

4. NALCO in its reply has submitted that it has set up a Captive Power Plant at Angul and is having 6 units of 120 MW each. It has commenced power generation w.e.f. September, 1986 to meet its demand of Captive load at Angul and Damanjodi and using the transmission system of OSEB/GRIDCO. NALCO is also utilising a part of its generation as auxiliary consumption for its Captive Power Plant at Angul. In extreme cases when there is complete failure of Grid power, NALCO draws power to start its units, but such cases are rare and most such cases occurred due to grid imbalance but are not under the control of NALCO. In spite of such occasional drawl NALCO, debits 3 times power it imports from the grid out of its total export based on mutual agreement.

- 4.1 NALCO has further submitted that, as per definition in clause 2 of the Distribution and Retail Supply License, CESCO is authorized for power supply in any system having a designed voltage of 33 KV and lower and to deliver electricity to the users taking supply of electricity at voltage of 33 KV and lower. But CESCO is not authorized to deliver power to any end-user taking supply at any voltage higher than 33 KV. Therefore, Distribution companies like CESCO do not have the right to retail supply of electricity to any consumer connecting to the extra high tension transmission system of GRIDCO.

- 4.2 NALCO further stated, as per Rule-3(5) of the Orissa Electricity Reforms (Transfer of Assets, Liabilities, Proceedings and Personnel of GRIDCO to Distribution Companies) Rules, 1998 only the system and infrastructure related to the designated voltage of 33 KV and below have been transferred to the petitioner. Similarly also all the agreements and consumers associated and connected to the Distribution system alone are deemed to have been transferred to CESCO by GRIDCO. Thus the consumer/end-user not connected to the Distribution system, which is owned and operated by the petitioner after the transfer are not supposed to be transferred to the control of the petitioner, especially when power is not supplied to them from the system transferred to the control of the petitioner, but are being fed from the system and infrastructure owned and operated by GRIDCO.
- 4.3 Further, inadvertent draw of power by NALCO from the State Grid is marginal, on the contrary, there is maximum injection of surplus power generated by the CPP at Angul. Therefore NALCO is not an ordinary consumer but a valued supplier to the grid and it cannot be a consumer or end-user of electricity of the DISTCO namely CESCO.
- 4.4 Further as per clause 5.1(a) of Transmission and Bulk Supply License, the Bulk License is permitted to enter into arrangement for the ancillary services. The Ancillary Services in clause 5.5 has been defined to include black start, reactive power frequency control and such other services, as an electricity operator may be required to have available. Emergency power drawn by NALCO, therefore,

comes under the prescribed "ancillary service" for which GRIDCO and the Bulk Supply Licensee is authorised to make arrangement.

- 4.5 Further as per the MOU signed between GRIDCO, NALCO and Deptt. of Energy on 01.06.94, NALCO has the right of receiving power on adjustment basis from GRIDCO and this cannot be withdrawn unilaterally by any party at this stage. Further NALCO is not an ordinary consumer rather a valued supplier of electricity and is not an end-user of electricity. As such the petition of CESCO is liable to be rejected.
- 4.6 ICCL an affected party, who has a CPP of 2X54 MW, supplying power to its sister concern at Theruvali using the EHT system of GRIDCO, has also challenged the application of CESCO on identical grounds taken by GRIDCO, and NALCO.
5. SOUTHCO's petition in Case No.26/2001 in short is that, it is the licensee for Retail Distribution of Electrical Energy in the entire region of SOUTHCO zone, which includes the area Theruvali in Rayagada District, coming under Rayagada Electrical Division, Rayagada where IMFA's factory is situated. GRIDCO had been granted Orissa Transmission & Bulk Supply License, for carrying on the exclusive business of transmission and Bulk Supply of electricity to the four distribution companies. GRIDCO has no right to sell power to consumers covered in the four distribution companies including SOUTHCO, who in turn have the exclusive right to sell power to consumers within their respective designated area.



Until 31.03.1999 GRIDCO continued to own all interest in SOUTHCO and it was only after 01.04.1999 when GRIDCO divested its interest in SOUTHCO, BSES Bombay acquired 51% of the share in SOUTHCO, for all practical purpose, the exclusive right to sale power to the retail supplier/end users/consumers within South Zone was held by SOUTHCO. During the period when IMFA, Theruvali was a consumer of OSEB and GRIDCO. Several agreements were made between supplier and consumer. But now as IMFA, Theruvali is carrying in business by utilising the Electrical energy within the licensed area of SOUTHCO, GRIDCO has no right to raise bills against IMFA. In spite of repeated letters, made by SOUTHCO, GRIDCO is violating Clause 5.1 of the Transmission and Bulk Supply License and is selling electricity to IMFA, Theruvali

- 5.1 The petitioner further submits that IMFA, Theruvali is an EHT consumer like other EHT consumer of the petitioner though it might be connected with the transmission system of GRIDCO. IMFA, Theruvali is an end user as he is utilising power supply to its plant within the territorial area of the petitioner and he is bound to purchase electrical energy from the retailer SOUTHCO who has the sole distribution rights.
- 5.2 The petitioner therefore prays that the Commission be pleased to pass a direction to GRIDCO not to sale electrical energy to IMFA, Theruvali and raise bills and further credit to account of SOUTHCO for all the amount already recovered from IMFA, Theruvali towards energy bill charges and direct IMFA, Theruvali to become a consumer of SOUTHCO after observing all the rules and regulations.

6. Replying to the above, GRIDCO has submitted that IMFA's plant at Theruvali is not the end user of electricity from the Distribution and Retail Supply Licensee. Indian Charge Chrome Ltd. (ICCL, in short) has got the permission from Govt. of Orissa for installation of CPP at Choudwar and is presently having two units of 54 MW each. ICCL has commenced the Commercial generation of power w.e.f. February, 1989 with the intention to meet the demand of their captive load at Choudwar as well as that of IMFA at Theruvali, utilising the transmission network of OSEB/GRIDCO. ICCL has got a Ferro Alloys Plant at Theruvali for which ICCL wheels the required power from their CPP at Choudwar on payment of transmission/wheeling charges to OSEB/GRIDCO as fixed by Govt. of Orissa/OSEB from time to time. Hence, Ferro Alloys Plant of ICCL is not a consumer of SOUTHCO although it is situated in geographical area earmarked for SOUTHCO for distribution of electricity for carrying out their retail supply business.

6.1 As per Orissa Electricity Reforms (Transfer of Assets, Liabilities, Proceedings and Personnel of GRIDCO to Distribution Companies) Rules, 1998, all the existing Contract, Agreements duly in respect of the consumers have been transferred and vested in favour of SOUTHCO. As Ferro Alloys Plant at Theruvali is used to meet its power demand from the wheeled power from its CPP at Choudwar covered under Bilateral Agreements between ICCL & OSEB/GRIDCO this was not transferred to SOUTHCO since 01.04.99. The relationship between ICCL and GRIDCO is not that of a consumer of electricity

but that of a customer of service. ICCL has been supplying surplus power at Choudwar to OSEB/GRIDCO and GRIDCO by its obligation has been extending its transmission network to transmit the required power for ICCL's Captive consumption at Theruvali. For both the customer services, the consideration is fixed by OERC from time to time through public hearing in a transparent manner.

6.2 It is further submitted by GRIDCO that the Commission has issued the amended Transmission & Bulk Supply License, 1997 effective from 01.04.99 under Sec. 15 of the OER Act, 1995 to GRIDCO for carrying out the business of Bulk Supply and Transmission within the State. At no material times has GRIDCO sold electricity to Ferro Alloys Complex at Theruvali but extended the services of wheeling power from ICCL CPP at Choudwar to their sister unit at Theruvali. GRIDCO has got the requisite license for such wheeling of power and this has been allowed by OERC.

6.3 M/s IMFA, respondent No.2 in its reply has submitted that IMFA Group of Companies is having a Captive Power Plant at Choudwar and is either using the transmission system of GRIDCO for transmission of electricity to IMFA at Theruvali and/or supplying electricity to GRIDCO. GRIDCO does not sell electricity to IMFA and nor does GRIDCO raise any bill on IMFA. ICCL a sister concern of IMFA having a Captive Power Plant at Choudwar, uses the Grid, owned and controlled by GRIDCO for transmission of electricity and supplies surplus electricity to GRIDCO. This is the essential feature of the relationship between GRIDCO and ICCL & IMFA. Merely because some emergency power is

being used for start up, frequency control or such other services, as per the existing agreement by ICCL, it does not change the nature of relationship between GRIDCO and the CPP owner ICCL or IMFA. ICCL is essentially a customer of the services of its power to IMFA and supplying surplus electricity to GRIDCO. IMFA therefore cannot be a consumer of electricity to SOUTHCO.

6.4 IMFA further submits that an Electricity Operator has been defined in clause 2.3 of Transmission & Bulk Supply License, 1997, as a "licensee including Bulk Supplier, or a person who owns or operates a generating station or authorised person connected to the transmission system. Ancillary Services has been defined in clause 5.5 of the aforesaid license as "black start", reactive power, frequency control and such other services as any Electricity Operator may be required to have available as ancillary services pursuant to Grid Code or any agreement with the licensee primarily for the purpose of securing stability of operation on the transmission system. ICCL owning and operating generating stations and authorised to be connected to the Transmission system is an Electricity Operator and supply power for black start up and such other services for continuation of operation during emergencies/shut downs pursuant to agreements with the licensee is ancillary services, as per the terms and conditions in the licence, which GRIDCO is authorised to supply when needed. This is in line with the conditions set out in the MOU dated 15.11.94 between ICCL and OSEB.

6.5 IMFA further submitted that under the terms and conditions of the Distribution & Retail Supply License, SOUTHCO is authorised for power supply in any system

having a design voltage of only 33 KV and lower and to deliver electricity to end users taking supply of electricity at voltage of 33 KV and lower, as SOUTHCO is not authorized to deliver power to any end user taking supply at any voltage high than 33 KV. IMFA as well as ICCL are connected to Extra High voltage transmission system of GRIDCO. Hence Distribution Companies do not have any right to retail supply of electricity to any consumer connected to Extra High Tension system of GRIDCO.

- 6.6 Further as per Rule 3(5) of the Orissa Electricity Reforms (Transfer of Assets, Liabilities, Proceedings and Personnel of Gridco to Distribution companies) Rule, 1998, distribution undertakings which means the assets, liabilities and proceedings as related to the business of distribution and retail supply of electricity in the area is only transferred and vested on the DISTCOs. As evident from the definition of distribution, distribution system and retail supply, both in the Rule, 1998, as well as Orissa Distribution & Retail Supply Licence, 1999 issued by the Commission only the system and infrastructure related to a designed voltage of 33 KV and below have been transferred to SOUTHCO. Similarly also all the agreements and consumers associated to the distribution system alone are demand to have been transferred to SOUTHCO by GRIDCO. IMFA, the respondent did not have any valid agreement with OSEB or GRIDCO as a consumer at the time of formation of SOUTHCO. Hence question of transfer or vesting of agreement for supply of power to IMFA by GRIDCO as per Rule 3(5) of the 1998 Rules does not arise. IMFA was not a consumer to GRIDCO/OSEB at

the time of restructuring of the Board and hence cannot be considered as a consumer to the petitioner viz. SOUTHCO.

6.7 IMFA therefore submits that GRICO has neither violated the condition in its license, nor has encroach upon the distribution functions as licensed to the DISTCOS. The Distribution Companies are also not entitled as per the condition in their license to supply power to any end user at a voltage higher than 33 KV nor to IMFA who consumer power supplied by ICCL captive power plant. The petition of SOUTHCO should be rejected as it is not maintainable.

7. In Case No.27/2001, the petitioner SOUTHCO's case in short is that it is the exclusive licensee for retail supply and distribution of electrical energy in the entire region of South Zone, where NALCO's plant at Damanjodi is situated. NALCO's power at their CPP in Angul is being wheeled by GRIDCO to NALCO's Aluminium Plant at Damanjodi. Until 31.03.99, GRIDCO continued to own all interest and it was only after 01.04.99 when GRIDCO divested its interest in SOUTHCO and BSES, Bombay acquired 51% share in SOUTHCO. For all practical purposes, the petitioner has got exclusive right for retail supply and distribution to the end users/consumers, within the licensed area of SOUTHCO. As NALCO is carrying on business by utilising the electrical energy within the licensed area of SOUTHCO, M.D., SOUTHCO required GRIDCO to transfer the consumer to SOUTHCO. But GRIDCO did not pay any need to that. NALCO is an EHT consumer like other EHT consumer of the petitioner, though it might be connected with the transmission system of GRIDCO. NALCO is an end user, as

he is utilizing power supply to its plant within the territorial area of the petitioner and he is bound to purchase the Electrical Energy from the retailer SOUTHCO, who has the sole distribution rights. In OERC Case No.21/98, OERC has accepted to change the word "Consumer" to end user for the person taking supply from the distribution and retail supply licensee. This change has become necessary because EHT consumers will remain consumers of distribution company although they will be connected to transmission system of GRIDCO. As NALCO at Damanjodi is connected to the Transmission system of GRIDCO, they will be consumers of the Distribution Company. The petitioner has therefore prayed that the Commission should issue a direction to GRIDCO not to sell electrical energy to NALCO at Damanjodi and raise bills and further credit it to the account of SOUTHCO for all the amount already recovered from NALCO towards energy bill charges.

8. In its reply, GRIDCO has submitted that NALCO has got the permission from Govt. of Orissa for installation of CPP at Angul and is presently having six units of 120 MW each. NALCO has commenced commercial generation of power w.e.f. September, 1986, in order to meet the demand of their Captive load at Angul as well as that at Damanjodi, utilising the transmission network at OSEB/GRIDCO. NALCO has got an Aluminium Refinery Plant at Damanjodi for which NALCO wheels the required powers from their CPP at Angul on payment of the transmission/wheeling charges to OSEB/GRIDCO as fixed by Govt. of Orissa and OERC from time to time. The delivery of surplus power by NALCO to State Grid and wheeling of power by NALCO to its Captive load at Damanjodi

were governed by the Minutes of the meeting dated 25.11.91, dated 01.06.94 and Govt. Circulars dated 09.11.92, 20.11.92 and 13.09.93. Hence Aluminium Refinery Plant of NALCO is not a consumer of SOUTHCO although the Aluminium Refinery Plant at NALCO is situated in geographical area earmarked for SOUTHCO for distribution of electricity for carrying out their Retail Supply business.

- 8.1 Further, as per Orissa Electricity Reforms (Transfer of Assets, Liabilities, Proceedings and Personnel of Gridco to Distribution companies) Rules, 1998, all the existing contracts, agreements, deeds etc. in respect of the consumers have been transferred and vested in favour of SOUTHCO. As the Aluminium Refinery Plant of NALCO at Damanjodi is used to meet its power demand from the wheeled power from its CPP at Angul, covered under bilateral agreement between NALCO & GRIDCO, this was not transferred to SOUTHCO since 01.04.99.
- 8.2 GRIDCO further submits that the relationship between NALCO and GRIDCO is not that of a consumer of electricity, but that of a customer of service. NALCO has been supplying surplus power to OSEB/GRIDCO and GRIDCO by its obligation has been extending its transmission network to transmit the required power for NALCO's Captive consumption at Damanjodi. For both the customer services, the consideration is fixed by OERC from time to time through public hearing in a very transparent manner. GRIDCO at no material times has sold electricity to Alumina Refinery Complex at Damanjodi.



9. NALCO in its reply has submitted that NALCO has received necessary permission from Govt. of India for installation of Captive Power Plants both at Angul and Damanjodi. After completion of the projects, NALCO entered into an agreements with erstwhile OSEB and Govt. of Orissa for wheeling its surplus power to its units located in the State. With the above understanding in the background, NALCO is running its generating units and transacting business with OSEB now GRIDCO with agreed commercial terms. Out of the total generation, NALCO utilises major part of it for its own requirement at Angul & Damanjodi and another part for meeting the ancillary consumption and the balance part it feeds to the State grid. In case of total dark out, because of grid imbalances/failures, NALC draws emergency power for starting the units. NALCO debits 3 times the power it consumes from its total supply to the grid in line with earlier agreements. The MOU signed between OSEB (now GRIDCO), Govt. of Orissa and NALCO on 01.06.94 was signed before restructuring of GRIDCO and transfer of assets to the distribution companies and remained in force irrespective of any subsequent contract between the petitioner and GRIDCO. It is in force till today. Further more, NALCO is not a retail consumer but a valued supplier to Grid and therefore the petition of SOUTHCO be rejected.
10. We have heard the arguments of the Advocates for GRIDCO, SOUTHCO, CESCO, NALCO & IMFA and would like make our observations as follows:

11. NALCO obtained permission from Govt. of India for installation of Captive Power Plant at Angul (six units of 120 MW each) and has commenced the commercial generation of power w.e.f. September, 1986 to meet the demands of their captive loads at Angul and Damanjodi, using the transmission system of OSEB/GRIDCO. NALCO has also utilised a part of its generation as Auxiliary Consumption for its CPP at Angul. After meeting its Captive load and the Auxiliary consumption for generation of power and the wheeling loss of the Transmission system, NALCO supplies the surplus power to the State Grid. This arrangement has continued since 1986 till now.
12. Indian Charge Chrome Ltd. (ICCL, in short) has got the permission from Govt. of Orissa for installation of CPP at Choudwar and is presently having two units of 54 MW each. ICCL has commenced the Commercial generation of power w.e.f. February, 1989 with the intention to meet the demand of their captive load at Choudwar as well as that that of IMFA at Theruvali, utilising the transmission network of OSEB/GRIDCO. ICCL has got a Ferro Alloys Plant at Theruvali for which ICCL wheels the required power from their CPP at Choudwar on payment of transmission/wheeling charges to OSEB/GRIDCO as fixed by Govt. of Orissa/OSEB from time to time.
13. In the meanwhile, on promulgation of OER Act, 1995, the State Electricity Board was disbanded on 01.04.96 and in consequence of functional unbundling newly constituted GRIDCO as the successor of OSEB was put in charge of two distribution business - one for Transmission & Bulk Supply and the other for

Distribution & Retail Supply. OERC has issued Orissa Transmission and Bulk Supply Licence, 1997 (No.2/97) to GRIDCO for carrying out the business of Transmission and Bulk Supply of electrical energy in the State. The Licence was amended vide OERC order dt.31.03.99 in Case No.21/98. The word "consumer" had been defined in the earlier Licence as "consumer means the end or final user of electricity", whereas in the amended license, "consumer means the end or final user of electricity supplied by the Distribution and Retail Supply Licensee or by any other authorized person". In view of the changed definition, NALCO who owns and operates a CPP of 120X6 MW is not a consumer, as it is not a end-user of electricity supplied by the Distribution and Retail Supply License or by any other authorised person. On the other hand, "Electricity Operator" as per amended License, has been defined as "Electricity Operator means a licensee including Bulk Supplier or a person, who owns or operates a generating station or Authorized person connected to the Transmission System".

14. Since NALCO owns and operates a generating station of 120X6 MW (C.P.P.) it has to be categorized as an "Electricity Operator" and not a consumer of any Distribution Company.
15. While NALCO is a generator with arrangement for sale/supply of surplus power to the State grid, it at times, draws inadvertent power from the State Grid. As affirmed by GRIDCO, during a period of last 14½ years from the commencement of commercial generation of power from NALCO CPP, NALCO made a gross injection of 11877 MU to the State grid, whereas during the said period, NALCO

CPP had drawn 200.751 MU towards inadvertent power which comes to 1.69%. Thus NALCO is a net supplier of power even though as a natural concomitant to its connection the grid system has been occasionally during power inadvertently or in emergency situation.

16. As indicated in clause 5.1(a) of the Transmission & Bulk Supply License, 1997 the licensee is permitted to enter into arrangement for the purpose of ancillary services. Clause 5.1 (a) of the Transmission & Bulk Supply Licence reads as follows.

"In the State of Orissa neither the Licensee nor any of its Affiliates shall without the prior written consent of the Commission (a) purchase or otherwise acquire electricity or sell or otherwise transfer electricity to any person or otherwise carry on Transmission Business and/or Bulk Supply Business other than pursuant to this licence except that the Licensee or its affiliate shall be permitted to enter into arrangements for the purchase of ancillary services and sale of power surplus to the need of the State to State Electricity Boards Licensees of other States with the prior approval of the Commission; or"

17. Ancillary Services has been defined in clause 5.5 of the Transmission & Bulk Supply License, 1997 which is as under:

"Ancillary Services means black start, reactive power, frequency control and such other services as any Electricity Operator may be required to have available as

ancillary services pursuant to Grid Code or any agreement with the Licensee primarily for the purpose of securing stability of Operation on the Transmission System".

18. NALCO, owning and operating generating stations and authorized to be connected to the Transmission System of GRIDCO, is an Electricity Operator, as explained above and supply of power for black start up or such other services during emergency/shut down pursuant to agreement with the Transmission Licensee is "Ancillary Services", as per terms & conditions in the licence, which GRIDCO is authorised to supply when needed.

19. The Orissa Electricity Reforms (Transfer of Assets, Liabilities, Proceedings and Personnel of GRIDCO to Distribution Companies) Rule, 1998 was notified by the State Government on 25<sup>th</sup> November 1998 to make "transfer scheme rules for the purpose of providing and giving effect to the preparation and implementation of a scheme for the transfer of "distribution undertakings" of the GRIDCO to the Distribution companies (DISTCOs).

ii) Rule 2 of the above Rules defines, the distribution undertaking, distribution business and the distribution system as below:-

iii) 2(k)- "Distribution undertaking" means "assets, liabilities, proceedings and personnel specified in these Rules, as related to the distribution business of the xxx xxx Zone, as the case may be".

- iv) 2(i)- "Distribution business" means "the business of distribution and retail supply of electricity in the area of supply".
- v) 2(j)- "Distribution system" means "any system consisting mainly of cables, service lines and overhead lines, electrical plant and meters having design voltage of 33 kV or under and used for the transportation of electricity from a Transmission System or Generating Set or other points to the point of delivery to end users taking any supply of electricity at voltage of 33 kV or under, and includes any electrical plant and meters in connection with the distribution of electricity but shall not include any part of the Transmission System.
- vi) Rule 3(5) of the 1998 Rules states that "on the transfer and vesting of the Distribution Undertakings and except as otherwise provided in these Rules, the relevant DISTCO shall be responsible for all, or the relevant part of any contracts, tenders, rights, deeds, scheme, bonds, agreements and other instruments of whatever nature relating to the Distribution Undertakings, xxx xxx in the same manner as GRIDCO was liable immediately before the Appointed Date xxx xxx".
20. Thus the Distribution Undertaking which means, assets, liabilities, proceedings etc. as elated to the business of distribution and retail supply of electricity in the relevant area of supply is transferred and vested to the DISTCOs. Thus only the system and infrastructure related to a designed voltage of 33 KV and below have been transferred to DISTCOS. Similarly also all the agreements, contracts, rights

etc. which are associated and connected to the distribution system alone are deemed to have been transferred to DISTCOS by GRIDCO. Thus consumers/end-users not connected to the distribution system have not been transferred to the control of DISTCOS, as the power is not supplied to them from the system transferred to the control of CESCO, but are being fed from the system and infrastructure owned and operated by GRIDCO.

21. Both CESCO & SOUTHCO claimed to have an exclusive "right" over a given area for supply of electricity by virtue of the Distribution and Retail Supply Licence issued to them.

22. Section 15(8) & 15(10) of the OER Act, 1995 reads as under:

"Section 15(8) - The grant of a licence under this section to a person shall not in any way hinder or restrict the grant of a licence to another person within the same area of supply or transmission for a like purpose and accordingly, the licensee shall not claim and exclusivity".

"Section 5(10) - The Commission may authorise licensees and other persons to exercise such power and authority as the licensees and other persons could be given under the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948".

23. Therefore grant of Distribution and Retail Supply Licence does not vest any exclusive right to the DISTCOS, as claimed by them for supply of power within their specified area. Sec. 15(8) and 15(10) specifically bar any such claim of exclusivity by the licensee for supply of power.
24. In view of the discussions made in the foregoing paragraphs, we find no merit in applications filed by CESCO and SOUTHCO to restrain GRIDCO for sale of power to NALCO at Angul and Damanjodi and IMFA at Theruvali and accordingly the same are rejected.

**(H.S. SAHU)**  
**MEMBER**

**(D.K. ROY)**  
**CHAIRMAN**