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**Case No.28 of 2001**

2. The brief facts of the case is that the petitioner M/s Sun Granite Ltd has a manufacturing unit, manufacturing highly polished granite slabs located at Paniora, P.O. Palaspur, Dist-Khurda. The petitioner has entered into a agreement with OSEB, on 27<sup>th</sup> day of January, 1996, for supply of power with a contract demand of 950 KVA, at a normal pressure of 33 KV. Subsequently a fresh agreement was made on 28<sup>th</sup> day of May, 1999, between the petitioner and Grid Corporation of Orissa Ltd, for supply of power with a contract demand of 600 KVA at a normal pressure of 33 KV, with a provision that the agreement shall come into force 01-05-96. It is alleged by the petitioner, that power supply to the claimant's unit started on 22.2.96 at 5.45 PM, but right from the beginning power has seldom been supplied at 33 KV to the petitioner. There is extremely low incoming voltage generally between 7AM to 9.30 AM and 6 PM to 9.30 PM. Sometimes all of a sudden the incoming voltage drops sharply as a result the mechneries get shut down and sustain grave damages. There are also numerous unscheduled power cuts in a day which result in sudden stoppage of machineries causing grave damage to the same. Although the petitioner has made numerous correspondence with the supplier, it has not been favoured with any reply by the supplier, nor the supplier has taken any corrective steps the ensure proper power supply to the petitioner at 33 KV. The Project Manager, DIC, Bhubaneswar, who visited the unit on 30.3.97 has also requested the supplier, to give uninterrupted power supply to the petitioner without voltage fluctuation, but without any result. The petitioner has also claimed that, as the supplier has been unable to supply power at 33 KV, it is not required to pay minimum charge, to the supplier, in

terms of the clause 9.1.4 of the I.P.R 1992. The petition has therefore prayed that the Commission should direct CESCO to pay an amount of Rs.12,78,89,692.00 as contained in the claim statement along with 25% interest per annum on the claimed amount from 22.2.96, that is the date of power supply, towards damages sustained by its manufacturing unit on account of low voltage supply and unscheduled power cuts.

3. In their reply the respondents have contended that, the petitioner had filed writ petition vide OJC No.10494/96 before the Hon'ble High Court, praying inter-alia.

- i) To quash the disconnection notice issued by GRIDCO dated 21.9.96.
- ii) To direct the Opp. Parties to refund the sum of Rs.2,33,674.25 to the petitioner.
- iii) The Opp. Parties should be directed to ensure strict implementation of IPR 1992.
- iv) GRID Corporation should be directed to give proper power supply to the petitioner.
- v) The Opp. Parties namely GRIDCO and Executive Engineer, KED, Khurda be directed to refund an amount of Rs.2,59,688.20 to the petitioner without prejudice to its claims for damages against GRIDCO.

4. Considering the affidavit filed by the parties and after hearing at length, the Hon'ble High Court has disposed of the said writ petitioner on 9.4.2001 with the following observations.

"17. The nature of the present dispute has already been discussed hereinbefore. It is not possible to decide the dispute in this writ jurisdiction. This Court is of the view that the petitioner should approach the Regulatory Commission for adjudication of his grievance.

18. So far as the claim for compensation is concerned, the petitioner is to approach the general Civil forum with its claim for compensation.

19. In the facts and circumstances stated above, this writ petition is disposed of with the following directions:

- i) The petitioner is given liberty to approach the Electricity Regulatory Commission constituted under the Orissa Electricity Reforms Act, 1995, with all necessary materials and particulars relating to the disputed bills and claim for exemption from payment on minimum charge basis within a period of three weeks from the date of this order.
- ii) If the petitioner raises the present dispute before the Electricity Regulatory Commission within the aforesaid period the

Commission will determine the same in accordance with law within a period of three months from the date of reference/submission of grievance. The Commission will give opportunity of hearing to the petitioner, the licensee and allow the parties to adduce necessary evidence in support of their respective claims.

- iii) In case of any dispute arising after the date of this order the petitioner will have to raise dispute in accordance with paragraph 110 of the Supply Regulations, 1998.
- iv) The licensee will not employ any coercive measure for realisation of the demand raised in the impugned bills till disposal of the dispute by the Orissa Electricity Regulation Commission subject to the condition that the petitioner will pay a sum of Rs.5 lakhs to the licensee within a period of one month from the date of this order. In case the petitioner does not submit and/or raise the dispute before the Regulation Commission within the aforesaid period and/or the petitioner fails to pay the aforesaid amount of Rs.5 lakhs within the prescribed period the licensee will be at liberty to take legally permissible steps to realise demand as per the impugned bills".

5. The petitioner filed A.H.O. No.64/2001 before the Division Bench of the Hon'ble High Court challenging the order of the Hon'ble Single Judge in the aforesaid

writ petition. The Hon'ble Division Bench disposed of the said A.H.O. in its order dated 11.5.2001 with the observation that

“Except the directions regarding payment of Rs.5 lakhs by the present appellant all other directions contained in judgement of the learned single judge shall remain unaltered”.

6. The Hon'ble High Court in its order dated 9.4.2001, has observed vide para 18 quoted above :

“So far as the claim for compensation is concerned, the petitioner is to approach the general civil forum with its claim for compensation”.

7. In view of the observations of the Hon'ble Single Judge which was confirmed by the Division Bench in A.H.O., the claim petition filed for damages by the petitioner is inadmissible and not maintainable and should be rejected.
8. The Commission has heard the argument of both the parties at length. The petitioner, has approached the Commission, claiming for damage to the tune of Rs.12,78,89,692.41 payable by CESCO, sustained by its manufacturing units, for manufacture of polished granite, due to poor voltage supply and unscheduled power cuts. However it has been observed by the single bench of the High Court, which has been confirmed by the Division Bench that, so far as the claim for

compensation is concerned, the petitioner is to approach the general civil forum with its claim for compensation. In view of the express observation of the High Court, the application of the petitioner seeking claim for compensation, filed in the commission is not maintainable and rejected.

9. The next question arises is to determine whether the petitioner is entitled to exemption from payment of minimum charge and shall only pay for the actual quantity of demand and/or energy consumed in lieu of contract demand as envisaged in clause 9.1.4 of I.P.R. 1992.

The relevant clause 9.1.4 of IPR 1992 reads as follows :

“Provided that during power cuts, discontinuance/ reduced supply, all industries irrespective of their contract demand shall not be liable to pay minimum charge in accordance with the agreement, but shall only pay for the actual quantity of demand and/or energy consumed in lieu of the contract demand.

**Explanation :**

Date of power supply means the date of power supply by the Orissa State Electricity Board for commercial production. In cases where power for construction and power for production are separately taken, the date of power supply will be arrived on the basis of power for commercial production”.

10. The petitioner has produced a certificate from the Director of Industries dated 1<sup>st</sup> August, 1996, indicating that M/s Sun Granites Exports Ltd., Paniora, P.O. Palaspur, Dist-Khurda is an industry under Large Sector for manufacture of polished granite slabs and its date of commercial production is 18.5.96 (Eighteenth May, Nineteen hundred Ninety six).
11. The IPR 1996 which was issued on 1<sup>st</sup> March, 1996, was published in the Extra Ordinary Gazette on 7<sup>th</sup> March 1996. As defined in the Industrial Policy 96, "Effective date means the date of issue of this policy on and from which the provisions thereof shall be operative". As the IPR 96 was issued on 1<sup>st</sup> March, 1996, the same came into force w.e.f. 1<sup>st</sup> March, 1996. The IPR 1996, does not provide for any concession towards exemption from payment of minimum charges. Since the Industrial unit of the petitioner, started commercial production on 18<sup>th</sup> May 1996, after coming into force of IPR-1996, it is no longer entitled to the benefit of exemption of Minimum Charge as envisaged in IPR-1992. Therefore the claim of the petitioner for getting exemption from payment of Minimum Charges is misrepresentation of facts and is rejected.

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

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