

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR-751 012**

**Present : Shri D.K.Roy, Chairman
 Shri H.S. Sahu, Member**

Case No.21 of 2001

M/s Tata Sponge Iron Limited, Joda **Petitioner**

- Vrs. -

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|------------------------------------------------------|--------------------------|
| 1. Grid Corporation of Orissa Ltd., Bhubaneswar | |
| 2. North Eastern Electricity Supply Company | |
| of Orissa Ltd., Balasore. | Respondents |

For Petitioner : Mr. Ashok Parija, Advocate

For Respondent No.1 : Mr.N.C. Nayak, Sr. G.M. (R&T), GRIDCO

For Respondent No2 : Mr. B.K. Nayak, Advocate.

Date of argument : **08.06.2001**

Date of Order : **28.06.2001**

ORDER

1. This proceeding arose out of an application filed by M/s Tata Sponge Iron Limited to permit wheeling of approximately 2.5 M.W. power to Ferro Alloys Plant at Joda, a sister concern situated within 7 K.M. from Tata Sponge Iron Ltd., though NESCO's 33 K.V. network.

2. The brief facts of the case is that, the Commission vide its order No.OERC-187 dated 26.7.2000 granted permission for installation of a Captive Power Plant of 7.5 M.W. capacity to the petitioner, out of the waste gas generated from the operation of its Kiln.

3. The petitioner has submitted that the aforesaid C.P.P. will be commissioned by end of 2001. The operation of existing two kilns require 4.5 M.W. of power. The petitioner had its plan for installation of 3rd Kiln which would need additional 2.5 M.W. of power, but due to removal of quantity restriction of import w.e.f. 1.4.01 and an uncertain market condition, implementation of the 3rd Kiln has been deferred. It may take about 2 to 3 years to revive this proposal. This has resulted in the surplus of approx. 2.5 M.W. of power compared to its requirement.
4. The Ferro Alloys Plant of TISCO a sister concern of TSIL is located at 7 Km. away from this plant, which is a consumer of NESCO. Due to high cost of power, this Ferro-Alloy Plant is running at loss. The petitioner, therefore, proposes to give this 2.5 M.W. of power to Ferro Alloys Plant, which can be wheeled by payment of appropriate wheeling charges through the existing 33 K.V. transmission system connecting Joda and the Sponge Iron Plant. Both Tata Iron & Steel Company and the petitioner company are under one veil of Tata Group, and this arrangement will help TISCO's Ferro Alloys Plant considerably.
5. The entire generation from the power plant being from waste gas, full utilization of the capacity will be beneficial to all concerned, and under utilisation of the capacity will be a national waste. The petitioner-company is willing to pay the wheeling charges on the quantity of power proposed to be transmitted. The surplus situation is stated to be only for a period of 2 to 3 years till the 3rd Kiln is commissioned and this is intended to be utilised by another sister concern namely Ferro Alloys Plant of TISCO.
6. The petitioner therefore has prayed that the Commission may permit the wheeling of the surplus power through existing NESCO wires on payment of wheeling charges.
7. NESCO, respondent No.2 who is the Retail Supply Licensee, for supply of power in the area, has submitted that permission was granted to the applicant for

installation of CPP with the stipulation that the generation of power from the CPP should be restricted to the requirements of applicant as outlined in the application. It was also indicated in the permission order, that the permission granted may be withdrawn anytime if anyone or more of the conditions are violated.

8. As against all stipulations, in the present application, the petitioner has submitted that out of 7 M.W. of power to be produced from the C.P.P., there shall be a surplus of 2.5 M.W. of power, which the petitioner wants to provide to M/s Ferro Alloys Plant of TISCO, which is located 7 Km. away from the existing plant, by wheeling it through the NESCO grid. The said prayer is against the terms of the permission granted by the Commission.
9. Section 14(1) of the Orissa Reforms Act, 1995 provides that no person other than those authorized to do so by the license or by virtue exemption under the Act, shall engage in the State in the business of transmitting or supplying electricity. Transmission and Bulk Supply License has been granted to GRIDCO, for transmission of power and bulk supply to four Distribution Companies. Separate Distribution License has been granted by the Commission in favour of NESCO for supply of power to different consumers with the area of supply as mentioned in the licence. The petitioner unit and M/s Ferro Alloys Plant of TISCO are situated within the Licensed area of NESCO. It is only the NESCO who has been given licence for supply of power to different consumers including M/s Ferro Alloys Limited and nobody else. No license or permission has been granted in favour of the petitioner for supply of power to any other unit whether surplus power of CPP or power from any other source. The supply of power to M/s Ferro Alloys Ltd. as prayed for will affect the business prospect of the company. As such the application of the petitioner for wheeling of 2.5 M.W. of surplus power to Ferro Alloys Plant at Joda may be rejected.
10. GRIDCO, the respondent No.1 in this case has also submitted that the proposal for wheeling of surplus 2.5 M.W. power does not seem to be technically feasible due to the following reasons:

- a) Ferro Alloys Plant receives power in 11 K.V.
 - b) Tata Sponge Iron Ltd. receives power in 33 K.V.
 - c) There is no direct link between the 33 K.V. system and 11 K.V. system.
 - d) The link between the two system is only through the 132 K.V. grid.
 - e) Practically 2.5 M.W. power cannot be wheeled.
 - f) Transfer of power in this case shall be only through the method of displacement.
 - g) The injection of 2.5 M.W. surplus power is not firm and guaranteed.
 - h) The uncertainty of 2.5 M.W. surplus generation shall adversely affect the commercial transaction of GRIDCO as in case of necessity, GRIDCO shall be required to procure costlier power and supply the same to M/s Ferro Alloys Plant through NESCO.
11. While granting permission for establishment of C.P.P., it was stipulated by the Commission that the petitioner shall make adequate arrangements to prevent reverse flow of power to the licensee's system and in case of inadvertent flow, the licensee shall not pay any charge/fees and duties. This provision indirectly restricts the applicant to generate power only to the extent of its own requirement. The applicant being aware of the situation has misled the Commission and obtained permission for 9375 KVA C.P.P. in place of 6250 KVA C.P.P.
12. Presently GRIDCO is surplus in power and taking up trading the surplus with other SEBs. GRIDCO shall pay fixed cost to other generators if 2.5 M.W. power is injected to the system by M/s Tata Sponge Iron Ltd. GRIDCO therefore objects to the proposal of the petitioner for such wheeling of power. GRIDCO shall not object to the transfer of 2.5 M.W. of surplus power from the petitioner to Ferro Alloys Ltd. if the same is done through the applicant's own line totally isolated from GRIDCO/NESCO system.
13. In the rejoinder, the petitioner has further submitted that encouraging Co-generation Plant is a policy of the State Govt. and Central Govt. Unless the

permission sought for by it is accorded, there will be wastage of power, which apart from affecting the interest of the applicant Company, will also lead to national wastage of power. There is a link between 33 K.V. system and 11 K.V. system through 132 KV/33 K.V. GRIDCO line. Transfer of power in the present case can only be done through displacement method. The injection of 2.5 M.W. of surplus power is reasonably firm and guaranteed. The contract demand of Ferro Alloys Plant is in excess of 16 M.W. which it is presently drawing from NESCO. Even if there is any failure on the part of the applicant company to inject 2.5 M.W. power in the system, it would hardly have any impact on GRIDCO. The requirement of the applicant company is 9375 KVA, commensurate with the capacity of C.P.P., but the said requirement would arise in about two years time, since at present due to adverse market condition it is not utilising its full installed capacity. Therefore for this interim period, the present arrangement has been devised so that 2.5 M.W. power is not wasted. Presently the power is being supplied to the applicant company through a dedicated transmission line from Joda to Bileipada. This line is not being used by any other consumer and is exclusively meant for the applicant company. The applicant company has also invested more than Rs.26.00 lakhs for erection of 33 K.V. bay at Joda substations for facilitating transmission of power through this line. The 33 K.V. line from Tata Sponge Iron Ltd., Bilaiapada to GRIDCO's Joda grid is therefore ideally suited to transmit 2.5 M.W. power to the Grid through displacement method and parallel operation as has been approved by appropriate authority. When the applicant company starts generating power for its own captive use, the said 33 K.V. line will become idle except during emergency requirement of power by the applicant company from the Grid. The applicant company will be willing to pay necessary wheeling charges as fixed by OERC to use the otherwise idle 33 K.V. line by which GRIDCO/NESCO will be financially benefited.

14. The petitioner further submits that the requirement of the applicant company is 9375 KVA C.P.P., but the said requirement would arise in about two years time, when the 3rd Kiln would be ready for operation. The transmission of 2.5 M.W. power to Tata Steels Ferro Alloys Plant at Joda is therefore only an interim

measure. Besides that when the power is being supplied to a sister company, it is deemed to be for captive use within Sec.44 of the Act, 1948 read with Sec. 21(3) of the OER Act, 1995. Further, this transaction between the applicant-company and TISCO, is a reciprocal arrangement between two sister companies. While TISCO will continue to supply iron ore, dolomite to the applicant company, which are basic raw materials for the applicant-company, TISCO, will receive power in lieu thereof. The arrangement for supply of electricity to the sister company cannot be construed as "engage in the business of supplying electricity" within the meaning of Sec. 14 of OER Act, 1995. It is categorically stated that the applicant company does not intend to sell electricity to any third party. The transaction between the two companies will be "sale" only in terms of accounting commercial arrangements.

15. Further, TISCO will not reduce its contract demand even if it is supplied with 2.5 M.W. of surplus power from the applicant-company. Therefore, the business prospect of NESCO will not be affected if permission is granted for wheeling of 2.5 M.W. of power to Ferro Alloys Ltd.
16. The Commission has heard the arguments of the applicant and the respondents. The Commission vide its order dated 28.02.2000, has granted permission to the applicant to set up a captive power plant of 6250 KVA capacity, inter-alia, with the following stipulations.

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- i) The generation of power from the CPP should be restricted to the requirement of the applicant as outlined in the application.
- ii) The petitioner shall make adequate arrangements to prevent the flow of power to Licensee's system and in case it flows inadvertently when in parallel, no charges/fees/dues will be payable by the concerned licensee.

17. However, subsequently after considering the application of the petitioner, for upward revision of the capacity of CPP from 6250 KVA to 9375 KVA, the Commission vide its order dated 26th July, 2000, granted it permission for installation of a CPP of 9375 KVA capacity along with the stipulations as mentioned above. It was also mentioned in the permission order, that the permission granted may be withdrawn at anytime if any or more of the conditions are violated.
18. It is worth repeating that while granting permission, Commission has stipulated that the power from the CPP should be restricted to the requirement of the applicant as outlined in the application. The rationale behind such a stipulation was that, Orissa being a surplus State in power, there is no need for any additional power from C.P.P. being fed into the State grid. With frequency remaining high, most of the time in the Eastern grid, it was felt that, there was absolutely no need for any extra power to be purchased by GRIDCO/DISTCOS from the CPP. Permission now sought for by the applicant to sell surplus power of 2.5 M.W. to Ferro Alloys Ltd., admittedly a sister concern, will result in additional power being injected into the State grid. This would be a violation of the stipulation already imposed by the Commission while granting permission, and would defeat the purpose of imposing such a restriction.
19. Besides that, any export of power by the petitioner, to M/s Ferro Alloys Ltd., would require the use of 33 K.V. line from Bileipada, where Tata Sponge Iron unit is located, to Joda, where it will be connected to 132 K.V. line of GRIDCO. The aforesaid 33 K.V. line belongs to NESCO, and NESCO has not been granted any transmission license within the meaning of Sec. 14 of the OER Act, 1995 for wheeling of the 2.5 M.W. power to be supplied to M/s Ferro Alloys Ltd., through this line. OERC regulations do not, as such, envisage free access for subtransmission lines.
20. It has been argued by the petitioner that M/s Ferro Alloys Ltd. would maintain the existing contract demand with NESCO, even if power of 2.5 M.W. is supplied to

it by the petitioner. Thus the commercial interest of NESCO will not be affected. In this regard, it may be stated that, even though, NESCO would get demand charge as before, it would be definitely deprived of getting energy charge for the energy corresponding to 2.5 M.W. of connected load, due to non-supply of power to M/s Ferro Alloys Ltd. This constitutes a significant component of its electricity charges on M/s Ferro Alloys Ltd. If permission as applied for is granted NESCO which is already incurring loss will lose some more revenue from a significantly subsidising customer.

21. It is also argued by the petitioner that promotion of Co-generation Plants has been a policy of the Central Govt. The policy encourages Captive/Co-generation Power Plants by industry and also suggests, inter-alia, sale of excess power to the grid as per mutually agreed rates. In this regard, it may be stated that such a policy had been formulated by the Central Govt., to meet the deficit situation in several states of India. As the gestation period of setting up large power projects is long, and there would be shortage of power in near future, Captive/Co-generation Power Plants are being encouraged. However, Govt. policy to encourage setting up Captive/Co-generation Plants does not give a blank cheque to set up such plants even where they are not needed. The Policy is in the nature of a guideline to be kept in mind while granting permission to set up new generating stations. It cannot be construed as a directive of the Central Govt. for automatic permission for setting up CPPs even where power is surplus and the Transmission and Supply Licensees are paying fixed charges for the power not needed in the State. The policy does not and cannot override Section 44 of the Supply Act read with Sec. 21(3) of the Reform Act conferring power on the Regulatory authority to consider justification of each case while granting permission. Eastern region of the Country, more particularly the State of Orissa is facing surplus situation. The Eastern Grid is experiencing the problem of over frequency most of the time due to excess power in the grid. As such, injection of any excess power to the grid from C.P.P. or Co-generation Plant, is undesirable at this stage. Permission to a CPP to sell power to Grid or to a third party - even if third party is a sister concern, is not in the interests of the State of Orissa at this stage.

22. We have the uneasy feeling that the petitioner had not fully disclosed its business plans while asking for permission and might have deliberately built over capacity with the intention to sell power to a sister concern by way of commercial arrangement. If likely surplus position would have been disclosed at the hearing stage the affected parties GRIDCO and NESCO's position would have been very different as is evident from the present proceeding. We do not know whether in such a situation the Commission could have granted permission to set up a CPP of 9375 KVA.
23. By grant of permission for sale or supply of 2.5 M.W. power to Ferro Alloys Plant at Joda, the Commission will have to not only ignore its consistent policy of not allowing third party sale of power in the present surplus situation in Orissa we will also have to ignore specific stipulations made while granting permission for setting up the CPP in case of the petitioner. In the circumstance we have to sustain the objection of NESCO and reject the petition of M/s Tata Sponge Iron Ltd., Joda.

(H.S. SAHU)
MEMBER

(D.K. ROY)
CHAIRMAN