

**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.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

Date of argument : **24.07.2001**

Date of Order : **31.07.2001**

ORDER

1. This proceeding arose out of an application filed by SOUTHCO for issuance of necessary directions to GRIDCO not to sale power supply to Indian Metals and Ferro Alloys Limited at Theruvali and retraining GRIDCO to raise electric bills against IMFA Ltd.
2. The petitioner's case 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

3. 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.

4. 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.
5. 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 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. 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.

7. 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.
8. 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.

9. 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.

10. 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.
11. 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.

12. 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.

(H.S. SAHU)
MEMBER

(D.K. ROY)
CHAIRMAN