

**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.3 of 2001

Cuttack Electrical Division, Cuttack **Petitioner**

- Vrs. -

M/s Murarka Biscuits Pvt. Ltd., Cuttack **Respondent**

For Petitioner : Mr.P.K. Jena, Advocate

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

Date of argument : **12.04.2001**

Date of Order : **23.04.2001**

ORDER

1. This is an application filed by the Team Leader, Cuttack Electric Division, the petitioner in this case, for withdrawal of permission No. OERC-142 granted by the Commission on 1.7.99 for installation of D.G. Set of 80 KVA capacity by M/s Murarka Biscuits Pvt. Ltd.

2. It is alleged by the petitioner that the respondent M/s Murarka Biscuits Pvt. Ltd. having its factory at Bainchua, P.O. Tangi had been granted permission vide OERC Permission No.142 dt.1.7.99 for installation of one D.G. Set of 80 KVA capacity in the premises of Murarka Biscuits Pvt. Ltd. The aforesaid permission, inter alia contains the following terms and conditions:

- "5. The set will work as a standby set only and hence has to be run only during power failure/restrictions.
6. Without further consent from the Commission, no material variation in the mode of operation of D.G. set shall be made.
11. The permission granted is liable to be withdrawn at any time of any one or more of the conditions are violated".
3. A penal bill of Rs.7,02,461/- had been imposed by the petitioner on the respondent for tampering of the metering unit installed by the petitioner. This was challenged by the respondent in the High Court. Due to non-payment of the aforesaid penal amount, the power supply to the firm was disconnected on 11.04.2000. However, the power supply was restored on 06.05.2000 on payment of Rs.3,50,000/- by the respondent as per the direction of the High Court. During disconnection of power supply, it had been found that the firm is running the D.G. set. On being asked to show-cause for the unauthorised operation of the D.G. set, the respondent has intimated that it has used the D.G. set during the disconnection period and has liberty to do so under Article 19 (6) of the Constitution of India. The petitioner further submits that Article 19(6) of the Constitution has no application in this case. In the instant case, the restrictions as imposed deals with power restriction as provided u/s 22(3) of the Indian Electricity Act, 1910. Under the circumstances, the restrictions as mentioned in the order of permission cannot be compared with constitutional right as guaranteed under the Constitution. As the respondent has violated Condition-5 of the permission order in running the D.G. set during disconnection of power supply, permission granted to him for running the D.G. set may be withdrawn.
4. The case of the respondent is that it has run the D.G. set during the period of power restriction only. The word 'restriction' it is pleaded, means limitation imposed upon a person. According to the respondent, when he has been restricted

to draw energy due to disconnection of supply, there is no violation of the Condition-5 of the permission in running the factory through a D.G. set.

5. The respondent has further submitted that sub-clause (g) of the Article 19(1) of the Constitution of India, guarantees the citizens to practise any profession or to carry on any occupation, trade or business. The state cannot prevent a citizen from carrying any business except by law imposing a reasonable restriction in the interest of the general public. The restriction mentioned in Permission order has to be given a wide connotation and not to a restricted meaning as provided in Section 22 'B' of the Indian Electricity Act, 1910. Therefore, it has not violated any of the Condition mentioned in the Permission order.
6. We have heard the arguments of both the parties. We are not inclined to accept the view of the learned Advocate for the respondent that the 'power restriction' as contained in Condition-5 of our Permission order dt.1.7.99 (Annexure-1) for installation of a Diesel Generator, should have wider connotation rather than a restricted meaning as provided in Section 22 'B' of the Indian Electricity Act, 1910. For maintaining supply and securing equitable distribution of energy, the State Govt. by order provide for regulating the supply, distribution, consumption or use of energy u/s 22 'B' of the Indian Electricity Act, 1910. We mean that when power supply is regulated as above, it is called 'power restriction'. The respondent cannot ascribe meaning to a word other than that intended by us being the competent authority, while granting permission to the respondent for installation of a diesel generating set.
7. In view of the above, we hold that the respondent is guilty of violating the Condition-5 of the terms and conditions imposed upon by us while granting permission for installation of D.G. set. We further direct that the respondent should stop immediately the operation of D.G. set during any time other than that of power failure/power restriction as explained above. In case it comes to our notice that there has been further breach of the above direction, the Commission would be forced to withdraw the permission granted to the respondent for

operation of D.G. set in accordance with Condition-11 of the terms and conditions granting permission for installation of D.G. set.

(H.S. SAHU)
MEMBER

(D.K. ROY)
CHAIRMAN