

Case No.39/2001

Dt.24.08.2001

Perused the Petition filed by GRIDCO, the Counter on behalf of CESCO and the Rejoinder filed on behalf of GRIDCO. Heard arguments on behalf of Gridco on the question of admission of the proceeding under S.28 of the Orissa Electricity Reforms Act, 1995.

The allegations in the Petition emanate from responsible sources and are supported by affidavit and documents. It appears, vide para 8(f) and (k) of the Petitioner's Rejoinder read with A/7 dated 7.8.01 and A/12 dated 16.8.01, that CESCO has expressed its unwillingness to purchase power from GRIDCO, the bulk supply licensee for the area, in accordance with the Bulk Supply Agreement dated 18.9.99. Work relating to billing for the month of July, 2001 appear to have stopped in several Divisions, vide Annexures A/18, A/19 and A/20 of the Rejoinder. CESCO's liability to pay salaries to its employees appear to have been bogged down in disputes, vide Annexures A/8, A/11, A/14, A/17, A/18 and A/21 of the Rejoinder, and salaries for July 2001, payable in August 2001 have not been paid by CESCO as admitted by CESCO in Annexure 6 to the Petition. There does not seem to be any likelihood of the resolution of the present impasse. This appears to have led to an explosive situation threatening labour unrest and consequential breakdown of power supply. The Petitioner further alleges that CESCO has not taken adequate steps to repair and restore its distribution system in several districts, especially in areas affected by recent floods, vide para 12 of the Petition and Annexure A/16 of the Rejoinder. CESCO has, however, denied this allegation in para 11 of its Counter.

In the light of these allegations and materials, the Commission considers this to be a fit case for a full inquiry on merits and accordingly admits this case as a proceeding under S.28(1) of the Orissa Electricity Reforms Act, 1995 for issue of appropriate interim order against CESCO. The Commission accepts the plea of CESCO in para 3 of its Counter to the effect that Respondent Nos. 2 to 4 being mere shareholders are not necessary parties in this case. The Commission thinks it fit not to go behind the corporate veil in this case. No notices shall be issued to Respondent Nos. 2 to 4 individually.

An interim order is a requisite in this case, in terms of S.28 of the Orissa Electricity Reforms Act, 1995. If the allegations are true, disruption of power supply is imminent in the entire area of operation of the licensee affecting all consumers and the general public. Moreover GRIDCO, the bulk supply licensee, is about to sustain substantial damages arising from stoppage of its sale of power to CESCO in breach of the Power Purchase Agreement and the entire budgeting and tariff set-up of both the licensees will be disorganized if not disrupted. The reform process, especially as envisaged in S.11(d) and (f) of the Orissa Electricity Reforms Act, 1995 shall receive a severe setback. There is no other remedy available except to proceed under S.28(1) of the Orissa Electricity Reforms Act, 1995 for immediate action by way of interim order.

The Commission is prima facie satisfied that CESCO, the distribution and retail supply licensee, is contravening the conditions and requirements of the Orissa Distribution and Retail Supply License, 1999 as detailed below:-

- 1) CESCO has stopped taking reasonable steps for procurement of adequate power and ensure that all consumers in the licensed area

of supply receive safe, reliable and economic supply of power, which is a violation of Condition 19(1) the licence read with S.17(1) of the Orissa Electricity Reforms Act, 1995.

- 2) CESCO is failing to take prompt and effective steps in the matter of billing and collection of revenue and preventing loss of revenue as authorised under conditions 21.9(a) of the licence and has closed down some of its billing and collection offices, which are subversive of the tariff order dated 19.01.2001 under S.26 of the Orissa Electricity Reforms Act, 1995 and violative of Reg.89 of the OERC Distribution (Conditions of Supply) Code, 1998.
- 3) CESCO has failed to disburse the pay and allowances of its employees for the month of July, 2001, which is likely to lead to labour unrest and consequential breakdown of power supply, amounting to violation of Condition 19(1) the licence read with S.17(1) of the Orissa Electricity Reforms Act, 1995.
- 4) CESCO has failed to repair and restore distribution system and other assets damaged by the supercyclone and recent floods within its licensed area, which is a violation of Condition 19(1) the licence read with S.17(1) of the Orissa Electricity Reforms Act, 1995.

Therefore a notice be issued to the licensee, i.e. CESCO, under S.28(3) of the Orissa Electricity Reforms Act, 1995, requiring it to furnish its representation or objection to the proposed order as set forth in the notice by 7th September, 2001.

The Commission is also satisfied that a situation of emergency and great urgency exists which is imminently likely to lead to breakdown of power supply in the licensed area of CESCO. The

area covers the urban agglomeration of Bhubaneswar and Cuttack, wherein the State capital and the High Court are situated and there is the greatest concentration of urban population, and all major hospitals, industrial and commercial establishments, all vital public institutions and Government offices, telecommunication, railway, TV, radio and newspaper establishments are situated within this area. The area also covers the largest number of District and Subdivisional headquarters.

The Commission therefore proposes to give direction under S.30(3) of the Orissa Electricity Reforms Act, 1995 for vesting of the management and control of the undertaking of CESCO along with the assets, interests and rights of the said undertaking with such other person as the Commission deems fit in order to maintain continued supply of electricity in an efficient and safe manner to the consumers of the area. However, in doing so the Commission shall take into account the object and purposes of the Orissa Electricity Reforms Act, 1995, especially S.11(1)(d) and (f) thereof.

CESCO may make any representation against the proposed order under S.30(3) of the Orissa Electricity Reforms Act, 1995 by 12 noon on 27.08.2001. CESCO will be heard on its representation, if any, at 3.30 PM on 27.08.2001.

The proposed interim arrangement being intended to safeguard public interest in a situation of emergency, the Commission brings this matter to the attention of the State Government, having regard to the provision of S30(2) of the Orissa Electricity Reforms Act, 1995. Accordingly a copy of this order be communicated to the Chief Secretary and the Secretary to Govt., Department of Energy, Govt. of Orissa. The State Government be requested to forward a

list of suitable names by 27.08.2001 out of which one may be selected by the Commission to take over management and control of CESCO,s undertaking, if after hearing CESCO, the Commission decides to issue the vesting order under s.30(3) of the Orissa Electricity Reforms Act, 1995.

Put up on 27.08.2001.

Sd/-
(B.C. JENA)
MEMBER

Sd/-
(H.S. SAHU)
MEMBER

Dt.27.08.2001

Shri L.K. Bhusan and Shri Rahul Sood, Advocates appeared on behalf of CESCO. Shri N.C. Panigrahi, Advocate appeared on behalf of GRIDCO. The Advocate for CESCO prayed for time till 7.9.2001, the date fixed for submission of representation by CESCO to the notice u/s 28(3) on the ground that the advocate who had earlier been briefed in the case is unable to come. No petition for adjournment has been filed. Shri Panigrahi for GRIDCO vehemently opposed the adjournment on the ground that the object of action u/s 30(3) will be defeated by delay and CESCO had sufficient opportunity on briefing a counsel on the matter, especially in view of frequent changes of counsel by CESCO. There is force in the contention of Shri Panigrahi. In the view of the urgency of the matter and in order to avoid further deterioration of the situation more time cannot be allowed for CESCO.

2. Counsel for CESCO contends that action u/s 30(3) of the OER Act is confined to the question of possibility of break down of power supply. There is no such possibility between now and 7th September, 2001. The letter dated 07.08.2001, vide Annexure A/7 of the Rejoinder, is merely a request to GRIDCO to reconsider the present arrangement under the Bulk Supply Agreement and warning to GRIDCO that credit to be extended by it for continuing supply of power will be at the risk of GRIDCO. Mr. Bhusan points out that in any event, there is no disruption in power supply till now. He further contends that payment of salary and collection of revenue should be looked upon as ongoing processes and an isolated disruption of such a process should not be construed as discontinuance of the process.

3. On the other hand counsel for GRIDCO contends that the letter of CESCO dt.07.08.2001 addressed to C.M.D., GRIDCO, Annexure A/7 clearly indicates CESCO's unwillingness to make further payment to GRIDCO for Bulk Supply of power which can only imply that GRIDCO has been asked to stop further supply of power. Mr. Panigrahi further submits that the process of collection of bills is being virtually abandoned by CESCO and there is no prospect of CESCO paying the salaries and allowances to its employees. Mr. Panigrahi submits that these are not isolated occasions but indicate cumulatively the intention to withdraw from discharge of CESCO's obligations under Licence Conditions to supply power to consumers in a sustained, coordinated, efficient and safe manner.
4. GRIDCO is the exclusive bulk supply licensee in respect of the Central Zone for which CESCO is the distribution and retail supply licensee. By letter dated 7th August, 2001, vide Annexure-A/7 to the Rejoinder of GRIDCO, CESCO has asked the said bulk supply licensee to stop supply of power. This would inevitably lead to stoppage of supply of power to consumers in the licence area. This is a fundamental breach of CESCO's licence condition, inasmuch as the main and basic purpose of the licence is to maintain continuity of supply of electricity to consumers in the licence area. Supply of electricity is an essential service, and as already pointed out in our order dated 24.8.01, the area involved is a highly sensitive region of the State. The act of CESCO would result in plunging a huge, densely populated area into total darkness and bringing vital operations of the Government, of commerce and industry, of banks and financial institutions, of transport and communications, of public health services, and other essential works like those of municipalities and of educational and research institutions to standstill, especially in these days of computerised

work. No utility can be allowed to hold the entire community and the State to ransom for an indefinite period. Further, the admitted position is that CESCO has failed to disburse the pay and allowances of its employees from July, 2001. It has not taken advantage of GRIDCO's proposed relaxation of Escrow Account vide Annexure-8 to the rejoinder for paying the salaries of the employees and it has not applied for permission of the Commission in this regard. It does not produce any evidence of its willingness to continue paying the salaries and allowances of its employees. Rather, a contrary intention appears from the action of the licensee in slackening its collection of revenue – the wherewithal for payment of salaries and other essential expenses. A convincing indication of this is closing down of the centralised billing system at the office at A/5, Forest Park, Bhubaneswar which has remained closed for the last several days as evident from Annexure-A/19 of the Rejoinder and closing down of billing counters and offices in areas of Bhubaneswar and Puri since last two months as evident in the D.O. letter No.10980 dt.23.08.2001 of Executive Assistant of M.D., CESCO addressed to M.D., CESCO. Further Chief Safety Officer, CESCO in his letter No.898 dt.10.08.2001 addressed to M.D., CESCO has requested for reconsideration of proposal of M.D., CESCO for closing up Safety Cell and Safety Training Centre located at Bhubaneswar. This speaks of the apathetic attitude of AES towards occupational safety of the users of electricity, tending to jeopardize the efficiency and safety of supply of electricity to consumer. The situation is very tense. Mr. Panigrahi, the learned counsel for GRIDCO, has drawn our attention to a letter dated 18.08.2001 of CESCO Employees Association threatening to go on strike from 5th September, 2001. The breakdown of power supply in the licence area is therefore imminent. There is no evidence that CESCO has taken or has any intention to take effective measures to prevent the impending

breakdown of power supply. The present proceeding under S.28 of the Orissa Electricity Reforms Act, 1995 is unlikely to be concluded within a sufficiently short time. There is a clear and present danger of breakdown of power supply and avoidance of it cannot be made dependent on uncertain eventualities.

5. Having considered the submissions of the parties the Commission is satisfied that in the facts and circumstances of the case and keeping in view the salient objective and purpose of the Act, there is an urgent necessity to vest the management and control of CESCO along with its undertakings, assets, interests and rights in an appropriate officer of the State Government, pending further inquiry in the matter, to ensure the maintenance of continued supply of electricity in the Central Zone (area of supply of CESCO) to protect the interest of consumers and the public interest.
6. The State Government vide letter No. 15850 dt. 27.08.2001 has nominated Sri Suresh Chandra Mohapatra, IAS and Sri Pradeep Jena, IAS pursuant to the request in our order dt.24.08.01 to take over management and control of CESCO. The Commission directs that with immediate effect the management and control of the undertaking of CESCO with all the assets, interests and rights shall vest with Sri Suresh Chandra Mohapatra, IAS at present M.D., OMFED and he shall manage the electricity supply activities in the licence area of CESCO till further orders of the Commission. Sri S.C. Mohapatra will function under the supervision of the Commission and will send periodical reports to the Commission as the Commission directs. The Commission may give such further or other directions from time to time if it considers necessary for the conduct of the affairs of electricity supply business. Sri S.C. Mohapatra shall be entitled to constitute such committees

composed of such persons, as he considers appropriate, including but not limited to those who are currently directors of CESCO, to be of assistance or guidance to him in the discharge of his functions.

7. In particular, it is further directed and clarified that
 - (1) Shri S.C. Mohapatra shall be designated “Chief Executive Officer of CESCO’s Undertaking”.
 - (2) He will have all the powers for management of CESCO's undertaking and business.
 - (3) All existing employees and executive staff attached to the undertaking of CESCO shall function under the direction and administrative control of Chief Executive Officer of CESCO’s Undertaking, and shall be accountable to him.
 - (4) Chief Executive Officer of CESCO’s Undertaking shall submit such periodic administrative report to the Commission, as the Commission directs and the report shall include –
 - (i) Measures taken for maintaining continued supply of electricity in an efficient and safe manner to consumers in licence area.
 - (ii) Maintenance of bulk purchase of power according to requirements.
 - (iii) Steps taken for regular payment of salaries to employees, so as to avoid breakdown of services relating to power supply to consumers.
 - (iv) Measures taken for efficient collection of revenue.
 - (v) Measures taken for maintenance of infrastructure of power supply to consumers in the licence area.

8. This order shall take effect forthwith.

A copy of this order be communicated to the parties, the Government of Orissa, and put up on the notice board of the Commission and on its website for general information.

Sd/-
(B.C. Jena)
MEMBER

Sd/-
(H.S. Sahu)
MEMBER