

**ORISSA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
BHUBANESWAR – 751 012**

Present:      Shri D.C. Sahoo, Chairman  
                    Shri H.S. Sahu, Member  
                    Shri B.C. Jena, Member

**CASE No.15/2002**

Executive Engineer (Elect.), CESCO,  
Athagarh Electrical Division, Athagarh,  
Dist. Cuttack

....      **Petitioner**

- Vers. -

1.      M/s Jagannath Weavers Co-operative  
         Spinning Mill Ltd., Nuapatna, Dist. Cuttack
2.      Govt. of Orissa, Deptt. of Energy, Bhubaneswar.
3.      Govt. of Orissa , Deptt. of Textile & Handlooms,  
         Bhubaneswar.

... **Respondents**

For Petitioner	:	Shri B.K. Nayak, Advocate
For Respondent No.1	:	Shri K.R. Mishra, Secretary
For Respondent No.2	:	None
For Respondent No.3	:	Shri P.K. Kar, Advocate

Date of hearing      :      **11.07.2002**

Date of order      :      **12.09.2002**

**ORDER**

1.      Jagannath Weavers Cooperative Spinning Mills Ltd., At/P.O:  
         Nuapatna, Dist: Cuttack is a consumer of Athagarh Electrical Division.  
         An agreement for power supply for this unit was executed through its  
         Managing Director with Athagarh Rural Electricity Cooperative Society,  
         Athagarh on 27<sup>th</sup> March, 1981 for a contract demand of 2500 KVA for  
         giving power supply to the unit. Power supply was given on  
         10.10.1983. The contract demand was reduced from 2500 KVA to

2000 KVA with effect from 11.04.1988 and further reduced to 1100 KVA w.e.f. 01.05.1998 at the request of the consumer. The agreement was executed between the consumer and S.E.E.C. Cuttack for a contract demand of 1100 KVA on 19.02.1999.

2. The Petitioner has reported that the consumer is a habitual defaulter in payment of energy charges. At the end of April, 1997, the outstanding arrears against the consumer was Rs.56,13,023.20. Pursuant to the decision of the Hon'ble Chief Minister taken in a meeting dtd.27.3.97, the Govt. of Orissa in Textile and Handloom Dept. vide their Memo No.3098 dt.05.04.97 intimated GRIDCO that it should not demand the arrear charges and the consumer has to go on paying current energy charges regularly. GRIDCO shall not disconnect electricity supply. Subsequently, the Jt. Secretary to Govt. in Textile and Handloom Dept. informed that the spinning mill shall only pay 50% of the current dues regularly and GRIDCO shall not disconnect the power supply. The above decision of Govt. was communicated on 18.11.97 to all Executive Engineers in charge of supply.
3. The petitioner has stated that from 01.9.99 onwards during the privatisation of CESCO, Respondent No.1 became a consumer of AED, Athagarh under the control of CESCO. The Director (Commercial), CESCO in its communication dtd.22.1.2000 to the Jt. Secretary to Govt., Textile and Handloom Dept. requested for 100% payment of the energy charges and also requested for reimbursement of cash losses to be incurred during the receipt of 50% of energy charges instead of 100%. The Respondent No.1 was requested thereafter to make payment of the current energy charges in full and due to non-payment of dues, the power supply was disconnected on 23.2.2000.
4. The petitioner has stated that the Respondent No.1 challenged the action of the Executive Engineer regarding disconnection of the power supply to the unit and filed a writ application bearing OJC No.2125 of

2000 before the Hon'ble High Court. The Hon'ble High Court relying on the guidelines issued by the State Govt. directed in their order dtd.07.3.2000 for restoration of power supply to the Respondent No.1 on acceptance of 50% of the energy charges. Pursuant to the order, the supply was restored on 08.03.2000. The Respondent No.1 is making payment of 50% of the current energy charges. The petitioner filed a counter application and also filed an application for vacation of interim order with a direction to the respondent for payment of full energy charges and outstanding dues. On 12.2.2002, the Hon'ble High Court passed the following orders :-

“Pendency of the writ application will not prevent the CESCO from approaching Orissa Electricity Regulatory Commission with its grievance that the direction/instruction of the State to supply electricity to M/s. Jagannath Weavers Cooperative Spinning Mill Ltd. on 50% of the current dues is beyond the power and jurisdiction of the State Govt. and/or that the said direction is prejudicial in as much the Company is not able to conduct their business in an efficient economical and equitable manner. If the OERC entertains the dispute as one with its jurisdiction, the Opp. Party No.4 will inform this court and an appropriate orders will be passed in this writ application. xxx”

5. The petitioner has stated that the State is entitled to give policy direction under Section 12(3) of the Orissa Electricity Reform Act, 1995. The Respondent No.1 in the instant case was making payment of 50% of the current dues and was not making payment of the energy charges in full. The State Govt. has not taken any step to reimburse the differential charges. Non-payment of the dues has resulted in accumulation of arrears to the tune of Rs.6,20,27,537.54 upto end of January, 2002.
6. The Petitioner has further stated that during the tariff proceedings, the State Govt. has stated before the OERC that they are not in a position

to provide subsidy to any of the DISTCOs. The petitioner has stated that since the subsidy has already been withdrawn, the state Govt. should have withdrawn the directives to make payment of 50% of the energy charges. The petitioner has requested the Commission to direct the State Govt. to make payment of the outstanding energy charges against the consumer along with balance of 50% energy charges so long as the orders/directives of the State Govt. to make payment of 50% of the dues has not been withdrawn.

7. Finally, the Petitioner has requested the Commission to direct the State Govt. and the Respondent No.1 to clear the outstanding dues to the tune of Rs.6,20,27,537.54 calculated up to the end of January, 2002 and also further direct the State Govt. to issue necessary instructions to the consumer to make full payment of the energy charges.
8. The Respondent No.1 in its reply dt.20.05.2002 has pointed out that the action of the petitioner in disconnecting the power supply will be coercive in nature and violative of article 24 of the constitution of India. The Respondent No.1 while highlighting the rationale behind the interim order, CESCO being a subsidiary company of GRIDCO cannot unilaterally withdraw from the joint decision taken by the State Govt., GRIDCO, the holding company. The respondent No.1 emphasised that there is nothing on record to show that the State Govt. has withdrawn the benefit as contained in its letter or circular dt.20.01.1997.
9. The Respondent No.1 has stated that the petitioner was enjoying the benefit of 50% of electricity charges for about three years and the State Govt. has not yet withdrawn the letter dt.21.07.1997. The disconnection of power will render 2000 employees job-less and as a purely interim measure have requested the Commission to direct the Opposite Party to continue, as such, supply of power on payment of 50% of the current bill. Acceptance of this amount will be without prejudice to the rights and contests of the said opposite party for the writ petition.

10. Finally, the respondent has prayed that in the public interest existing arrangements should continue until a viable alternative is worked out between the petitioner and the respondent.
11. It is very pertinent to note that the Jt. Secretary to Govt., Department of Energy in its communication to the Secretary, OERC vide his letter No.11335 dt.09.08.2002 enclosed the order regarding withdrawal of incentives granted to the Spinning Mills in the order dated 14.05.1997 which is reproduced below:-

“I am directed to invite a reference to your letter No.4400, dt. 22.05.2000 on the above subject and to say that Hon’ble Chief Minister took a meeting on 14.05.1997 to sort out the problems of the Spinning Mills. The decision was taken to allow all the Cooperative Spinning Mills of the State to deposit 50% of the current electricity charges to GRIDCO. At that time GRIDCO was a fully owned government company. In the meanwhile, the distribution business of GRIDCO has been privatised. The distribution in the Central Zone has been privatised with effect from 01.09.1999 and that of other zones with effect from 01.04.1999. The distribution companies being managed by private companies, are expected to run their business on commercial lines. The orders issued by the Textile and Handloom Department in this regard is no more applicable to private distribution companies. Moreover, by now Govt. have been pleased to pass orders to withdraw the aforesaid incentives”.

12. We have heard both the parties at length and after going through the relevant documents placed before the Commission, we conclude as follows :-

13. Consequent upon the enactment of OER Act, 1995 and issue of licence to GRIDCO for transmission and bulk supply as well as for distribution with effect from 01.4.96, the Govt. is empowered to give policy directive under Section 12(3) of the Act, 1995. The State Govt. is, however, required to reimburse the amount to compensate any concerned body or unit affected by grant of concession by the State Govt. In the instant case, the State Govt. has allowed payment to the extent of 50% of the power purchased by the said spinning mill in the letters cited above. As such, the Govt. has to pay subsidy to the extent of loss sustained by the distribution company i.e. CESCO.
14. Thus, after enactment of OER Act, 1995, the State Govt. cannot issue any direction or instruction to the distribution company to allow any concessional relief to any consumer except under Section 12(3) of the Act, 1995 in which case the company has to be compensated for the loss incurred by it. Thus, by issue of a directive to CESCO to permit Jagannath Spinning Mill to pay 50% dues and continue power supply is violative of the letter and spirit of the above provision. Thus, Jagannath Weavers Cooperative Spinning Mill being a consumer of the distribution company has to pay the electricity dues as calculated under the tariff applicable to it and the distribution company is entitled to recover the dues including all outstanding dues from it, failing which it is at liberty to take appropriate action as deemed necessary under the provision of law.

The case is disposed off accordingly.

**(B.C. Jena)**  
**MEMBER**

**(H.S. Sahu)**  
**MEMBER**

**(D.C. Sahoo)**  
**CHAIRMAN**