

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

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

Case No.43/2002

M/s Pratap Stone Products,
At/P.O. Dadhimachhagadia, Dist. Khurda **Petitioner**

- Vrs. -

1. Executive Engineer (Elect.), CESCO,
Khurda Electrical Division, Khurda.
2. Chief Executive Officer,
CESCO, 2nd Floor, IDCO Towers, Bhubaneswar **Respondents**

For petitioner : Shri K. Rabindranath,
Authorized Representative

For respondents : Shri B. K. Nayak, Advocate

Date of argument: 31.01.2003

Date of Order: 07.03.2003

ORDER

M/s. Pratap Stone Products is a stone crusher unit located in the district of Khurda. It availed electricity from Khurda Electrical Division under CESCO for a contract demand of 34 KW under medium industry category since 1992. Pursuant to inspection of MRT team of CESCO on 04.01.2002, supply to the premises was disconnected on 05.01.2002 and a penal bill amounting to Rs.2,24,548.00 was raised against the petitioner as penal charges for unauthorised use of power by tampering the meter.

2. The petitioner filed a writ petition before the Hon'ble High Court challenging the action of the Supply Engineer. The Hon'ble High Court in their order dt.09.04.2002 asked the Supply Engineer to restore supply to the consumer premises on deposit of Rs.50,000.00 by him. Further, the consumer would also deposit another Rs.20,000.00 by 31.05.2002 without prejudice to his rights and contentions. He was also informed that it might file an application before the competent authority for challenging the validity of the penal bill.
3. The petitioner represented his case to the Superintending Engineer, Electrical Circle, Bhubaneswar on 22.05.2002 under Regulation 110 of Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 1998 (hereinafter referred to as the "Distribution Code") for review of the penal bill. The Supply Engineer and his team including those from MRT in presence of the petitioner went through the details of the case and analysed the dump report retrieved from the meter. The meter provided to the petitioner records the sequence of events with year, date and time and when retrieved through the dump method, it authentically gives the detailed particulars of abnormal situations that have happened during the period. The dump report in the instant case clearly showed that the meter had been tampered on two occasions i.e. one on 18.05.2000 at 18.08 hours and another on 25.09.2000 at 06.33 hours.
4. The team headed by the Superintending Engineer reported that since tampering had been done and electricity was abstracted unauthorisedly, the action merits penalty and has to be dealt with as per Reg. 105 of the Distribution Code. The petitioner expressed dissent to the decision of the team.
5. The matter was referred to Bijli Adalat, which also upheld the action of the Supply Engineer. Aggrieved by the decision of the Bijli Adalat, the

petitioner made a reference to the Commission under Section 37(1) of the Orissa Electricity Reforms Act, 1995.

6. The hearing was conducted on 31.01.2003. The petitioner all along pleaded that the Reg.105 of the Distribution Code would not apply in his case as there has been no allegation of unauthorised consumption beyond contract demand. His contention is that unauthorised use of power by tampering with and by-passing the meter cannot be covered by the above regulation since there is no excess load beyond what has been contracted for. This was struck down by Bijli Adalat of CESCO and penal billing by the Supply Engineer was upheld.
7. We endorse the finding of the Bijli Adalat as far as tampering with the meter is concerned in as much as since this is a case of tampering, established by the dump report retrieved from the meter. The tampering with the meter is further corroborated by the facts that paper seals were removed & refixed and power consumption has down-slided drastically from 5/2000 onwards. It has been found to be not a case of the meter giving incorrect or inaccurate reading due to some inherent defect in the meter itself, but a case of lesser quantity of electricity entering into the meter by reason of tampering. Thus, an element of fraud exists. This is tantamount to dishonest abstraction of power forbidden by Reg. 104 of the Distribution Code and punishable u/ss 39 and 44 of the Indian Electricity Act, 1910. To such a factual matrix, Sec. 26 (6) of the Indian Electricity Act does not apply. An act that is forbidden by a provision of Regulations framed under Sec. 54 of the Orissa Electricity Reforms Act, 1995 can also be penalized by a provision of the Regulations, especially by a provision referable to Sec. 54(2)(j) of the Orissa Electricity Reforms Act, 1995. Accordingly, CESCO has applied Reg. 105 of the Distribution Code. However, we do not agree with the assessment of consumption made by Khurda Electrical Division for the period in question and the date from which it should be given effect to.

8. The Khurda Electrical Division has based its assessment on the meter reading obtained from January, 2001 to December, 2001 when the meter remained tampered. They have assumed that the meter was recording only 1/3rd of the actual consumption due to C.T. terminal reversal of one phase during the period. Therefore, the actual consumption would have been three times of the readings obtained. Commission is of the opinion that billing has to be made under Reg. 61 of the Distribution Code in such cases.
9. Since, the meter was tampered on 05/2000, average meter reading for consecutive three billing periods preceding the month has to be taken into account (2/2000, 3/2000 and 4/2000) for assessment of monthly consumption. As per records furnished, the average consumption for these three months comes to 2306 units, which should be considered as monthly consumption for the disputed period.
10. Next issue to be dealt with is the date from which penal provisions have to be enforced. As per Reg.105 (2) of the Distribution Code, the period of penalty can be varied based on clear evidence. We are of the view that, penal billing should be done from May, 2000 since the dump report has conclusively established that the tampering has taken place from this month.
11. During hearing, it was pointed out that penal billing for a period of one year from the date of detection of tampering is against the provision of Sec. 26(6) of I. E. Act, 1910 where time limitation was for a period of 6 months. We are of the view that, while Sec. 26(6) of I.E. Act, 1910 deals with accuracy and inherent defect of the meter for which power has been conferred on the Electrical Inspector to assess the consumption, Regulation 105 of the Distribution Code deals with fraud committed by the consumer i.e. illegal & unauthorised abstraction of power, which has to be dealt through regulation and power to make such regulation has been

vested with OERC under Section 54 of OER Act, 1995. In so holding, the Commission relies on the decision reported in AIR 1988 SC 71 (M.P.E.B. & others, appellants V. Smt. Basantibai, respondent). Their Lordships of the Supreme Court have observed thus in the said decision:-

“If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in supply, such a dispute does not fall within the purview of sub-sec. (6) of S. 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of S. 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the supervisions of the said Act.”

This decision of the Apex Court does not appear to have been cited or brought to the notice of the Hon'ble High Court in the case of H.S. Girda V. CESCO reported in 95 (2003) C.L.T. 65 and relied on by the petitioners. Reading these two decisions together, the ratio of the latter decision appears to Commission to be that Reg. 105 of the Distribution Code would yield to the provisions of Sec. 26(6) of the Indian Electricity Act, 1910 only when the facts of the matter bring the case squarely within the latter provision. As already stated, this is not the case here and we distinguish H.S. Girda's case accordingly.

12. We, therefore, dispose this case with orders as follows:-
 - a) Monthly consumption has to be reassessed as per Reg. 61 of the Distribution Code instead of placing reliance on meter reading of the tampered meter.

- b) Penal provision as stipulated in Reg.105 of Distribution Code would apply in this case. However, penal billing is to be limited for a period of one year only as stipulated under this Regulation. For the balance period i.e. from the date of tampering to the date from which penal provisions has been enforced, normal billing should be adopted.

We would like to mention here that the limitation of Reg. 105 being only for a period of one year, the licensee should not lose its revenue for the period when the meter remained under tampered conditions for more than a year as established from the downloaded meter data.

13. While disposing the case, we would, however, like to place on record that the Supply Engineer has failed miserably in management of his affairs. It is surprising to note that the monthly billing as low as 239 units for 6/2000, 359 units for 7/2000, 427 units for 8/2000 and 683 units for 9/2000 were served to the consumer without considering the fact that it is a medium industry having a load of 34 KW. Minimum monthly consumption in a normal month should not have been below 2000 units even when one considers six hours of operation for twenty days in a month with a load factor of 60%.
14. While it is the duty of the Supply Engineer to see that the energy supplied to the consumer is ascertained by means of a correct meter under Section 26(1) of the Indian Electricity Act, 1910, it is surprising to note that the meter remained under tampered condition for a period of twenty months till inspection of the MRT team and the supply staff could not get the scent about the tampering at the consumer's premises which is located so close to the Division headquarter. The obligations vested with the supplier under Section 57 of I.E. Rule, 1956 have been totally forgotten. The Commission feels that such a thing could not have occurred, if routine inspection had been done by the engineers of the division and routine tests on meters

were carried out by MRT at least once in a year for medium industries and large industries.

15. After analysing the case, one would tend to believe that there may exist an unholy nexus between the supply staff and the consumer, the fallout of which gives rise to such an avoidable dispute.
16. We, therefore, further order that Chief Executive Officer, CESCO may institute an enquiry into the case and the delinquent staff including those who supervise these activities responsible for such lapse be taken to task within a period of three months from the date of this order. Action so taken may be reported to the Commission by C.E.O., CESCO.

Sd/- (B.C.Jena)
Member

Sd/- (H.S.Sahu)
Member

Sd/-(D.C.Sahoo)
Chairman

Dt.07.03.2003

Order vide separate sheets is passed today. Monthly consumption has to be reassessed as per Reg. 61 of the Distribution Code instead of placing reliance on meter reading of the tampered meter. Penal provision as stipulated in Reg.105 of Distribution Code would apply in this case. However, penal billing is to be limited for a period of one year only as stipulated under this Regulation. For the balance period i.e. from the date of tampering to the date from which penal provision has been enforced, normal billing should be adopted.

Send copies of the order to the parties concerned as per Reg.57 of the OERC (Conduct of Business) Regulations, 1996.

Member (J)

Member (S)

Chairman