

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

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Present : Shri D.C.Sahoo, Chairperson  
Shri B.C. Jena, Member  
Shri S. K. Jena, Member

**Dated the 22<sup>nd</sup> day of May , 2006**

**Case No.3 of 2006**

1. M/s. The Southern Electricity Supply Company of Orissa Ltd, (Southco)  
Corporate Office, Courtpeta, Berhampur,  
Ganjam .... **Petitioner**

- Vrs –

M/s VBC Ferro Alloys Limited,  
Khairatabad, Hyderabad – 500 004. ..... **Respondent**

For the petitioner - Shri M. K. Mohapatra, Advocate

For the respondent - Shri R. C. Mohapatra

**ORDER**

This is a review petition filed by M/s Southco for review of the order dated 18.02.2006 passed in OERC case NO.18 of 2005.

2. On the date of hearing, the petitioner prayed for time as he has not received the counter reply of the respondent and he has to collect related documents pertaining to the case. The respondent categorically emphasized that he had served the copies on the petitioner at the Central Office, Bhubaneswar and he has filed the documentary proof there against. It is common-place practice as far as the petitioner is concerned.

Serving copy in the Central Office of the licensee is treated as serving copy on the licensee (Petitioner). It is the duty of the Central Office to communicate the same to the petitioner on time. So also it is the duty of the petitioner to collect all relevant documents relating to the case before the date of hearing. As such, there is no substantial ground for grant of time and postpone the matter. As the counsel for the petitioner and the authorised representative of the respondent are present and the respondent has filed its counter and other relevant documents the Commission decided to dispose the matter on merit, after hearing the parties and examining the records.

3. The Case No.18 of 2005 relates to approval of special agreement executed between CEO, Southco and M/s Vizag Bottling Company Ferro Alloys Limited, Khairatabad, Hyderabad (M/s VBC, in short) in terms of Regulation 81 of OERC Distribution (Conditions of Supply) Code, 2004 for supply of 10 MVA of power at 132 KV to their units at Rayagada.
4. M/s VBC requested M/s Southco to recognize them as a new industry for availing tariff discounts envisaged in Para 8.27 of OERC Tariff Order dated 22.03.2005. M/s Southco in turn came up with a petition to the Commission wherein the Commission directed to decide the status of M/s VBC in accordance with provisions of IPR 2001 of the Orissa Government. However, M/s VBC didn't fall under the category of 'new industry' as defined in IPR 2001.
5. During the course of hearing of the case, M/s VBC requested to keep the petition pending till classification regarding its status as a 'new industry' is decided by the state Government.
6. OERC Distribution (Conditions of Supply) Code, 2004 under clause 81 provides that any special agreement between the licensees and the

consumer shall have the approval of the Commission. The relevant clause is quoted below:-

*“The licensee may, having regard to the nature of supply and purpose for which supply is required, fix special tariff and conditions of supply for the consumers not covered by the classification enumerated in this Code. For such purpose licensee may enter into special agreements with the approval of the Commission with suitable modifications in the Standard Agreement form. The tariff in such cases shall be separately approved by the Commission”.*

7. During the course of hearing of the case, M/s VBC did not agree to the terms and conditions stipulated in the said agreement. As such , the Commission did not approve the said special agreement.
8. The present review petition filed by M/s Southco in Para 21 elaborates the grounds for review. These points are addressed as below:-

M/s VBC entered into a lease agreement with M/s Jeypur sugar Ltd., Rayagada for a period of three years. As a result of this M/s VBC could not execute the agreement for power supply for a period of five years as per the standard agreement form – 3 of the Distribution Code. Therefore, both the parties agreed to enter into a special agreement for a lesser period. Subsequently, during the hearing M/s VBC categorically stated that they are not agreeable to the terms and conditions of the special agreement although signed by them.

9. From available records it appears that M/s VBC availed power supply at 132 KV and met all the costs of furnishing the 132 KV Bay at Rayagada substation as per the requirement of M/s OPTCL (then GRIDCO). M/s Southco did not incur any expenditure for effecting power supply to the said company.

10. The power supply was commenced on 27.6.05 and disconnected on 1.11.05 by Southco due to non-payment of bills. On the date of commencement of power supply GRIDCO imposed load restrictions on the said firm limiting the load to 1 MVA. M/s VBC stated that they could not run their plant and machinery due to this load restriction. This petition of M/s Southco was filed on 13.3.06 after lapse of approximately 3½ months and that too after disconnection of power supply on 1.11.05. According to the regulations 100(3) in case of continued default in payment of electricity charges and any sum due to licensee by any consumer for a period of more than two months, the licensee shall be entitled to terminate the agreement executed by the consumer as per the terms and conditions of supply of the licensee as approved by the Commission and may remove the electric line or works connected with the provision of supply to the consumer. Therefore, by the time M/s Southco approached the Commission with the petition, there was no valid agreement existing between the parties. The total period of power supply availed by the consumer was for a period of little over four months.
11. The Commission carefully examined the grounds submitted by the petitioner and the reply submitted by the respondent. In principle, the petition for review generally has limited scope.

Normally, a review petition is maintained only when the following facts are established:-

- (a) Discovery of new and important matter or evidence,
  - (b) Mistakes or errors apparent on the face of the record,
  - (c) Any other sufficient reason.
12. The grounds submitted by the petitioner for review are misleading and confusing. Some of the grounds are beyond the scope of the review. As a party has withdrawn his consent and willingness to the terms and

conditions of the agreement virtually there exists no agreement. Even in reply to the review petition, the respondent has agitated the same issues and facts before the Commission. As per law, the Commission is vested with the authority for approval of special agreement only when both the parties to the agreement are willing to accept the terms and conditions at the time of approval for hearing before the Commission.

13. The numerous grounds for review raised by the petitioner can be categorized into three following issues-
1. The Commission has not assigned any reason for rejection of approval of special agreement.
2. M/s VBC Ferro Alloys Ltd., a party to the agreement cannot withdraw his consent and willingness at a later stage.
3. The limited power supply period of the petitioner to the respondent (VBC Ferro Alloys Ltd) shall not be treated as a temporary power supply.

With regard to issue No.1, the Commission in its order dtd.08.02.2006 has clearly stated its reason for non-approval of the special agreement. M/s VBC (Respondent ) the party to the agreement did not agree to the terms and conditions stipulated in the special agreement. The Commission's role with regard to approval of special agreement under Regulation 81 of the Distribution Code is limited. It cannot compel or issue any injunction to the party to the agreement who is withdrawing his consent and willingness before approval of agreement. So, unless there exists a valid agreement between the parties, the Commission is quite unable to examine and approve such special agreement.

With regard to issue No.2, the petitioner has every right to sue the respondent for breach of the contract and ask remedy before the appropriate Court. It is beyond the jurisdiction of the Commission to

consider or award any pecuniary benefits to the affected party, as a remedial measure, for breach of contract by another party to the special agreement.

With regard to issue No.3, the Commission is of the considered view that the respondent has to pay for the power supply, which he has availed for a limited period of about 4 months. The respondent in its letter dtd.13.02.2006 to the petitioner (Annexure No.4) and in its reply to the review petition categorically has admitted such fact. In this circumstance, the respondent is the admitted beneficiary and is liable to pay the considered amount to the petitioner for its limited period of power supply. The respondent should not be allowed to enrich unjustly at the expense of the petitioner. In the eye of the natural justice and equity it will be proper to treat the power supply period of the petitioner to the respondent as “temporary power supply” and the respondent is liable to pay charges as applicable to this category. Parties are required to settle their claims and dues within one month from date of this order.

14. From the above, it clearly shows that there is no new and important matter or evidence agitated by the petitioner for review. So also we do not find any mistake or error in the face of the record to warrant the review of the Commissions order dated 08.02.2006. With the above observations, we dispose this review petition.

**Sd/-**  
**(S. K. JENA)**  
**MEMBER**

**Sd/-**  
**(B. C. JENA)**  
**MEMBER**

**Sd/-**  
**(D. C. SAHOO)**  
**CHAIRPERSON**