

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAVAN, UNIT – VIII
BHUBANESWAR – 751012**

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

Dated the 19 day of August, 2006

Case No. 4 of 2006

M/s North Eastern Electricity Supply Company
of Orissa Ltd. (NESCO), Januganj, Balasore **Petitioner**

-Vrs-

M/s Tata Sponge Iron Ltd. (TSIL),
At. Bileipada, Joda, Dist. Keonjhar ... **Opp. Party**

For the petitioner - Mr. B.K. Nayak, Advocate

For the opp. party - Mr. L. Pangari, Advocate

ORDER

This order is initiated on the petition filed by M/s. NESCO dt.13.03.2006 praying therein to review the order dt.13.02.2006 passed in Case No.10/2005.

Facts leading to such review are as follows: -

1. The Commission vide its order dtd.11.02.2003 in Case No.1/2003 permitted the petitioner to purchase surplus power of around 18 MU from the opposite party, namely, M/s. Tata Sponge Iron Ltd. (in short TSIL) @ Rs.0.80 paise/Kwh and also provide annual banking facilities to the opposite party to meet its emergency power requirement to the extent of 3 MU/annum. Accordingly, both parties entered into an agreement for the

period from 16.02.2003 to 15.02.2004. The said period was extended from 16.02.2004 to 15.02.2005 executing a second agreement. After expiry of the second agreement, the parties executed the 3rd agreement wherein the petitioner put forth the conditions, namely,

- a) No banking facility will be available. On the other hand, M/s. TSIL would draw emergency power at the existing tariff.
- b) The surplus power injected by M/s. TSIL to M/s. NESCO will be @ Rs.0.86 paise/Kwh.

2. As against such agreement, the opposite party filed the petition before the Commission with a prayer to permit continuance of banking facilities as was envisaged in the Commissions order dtd.11.02.2003 in Case No.01 of 2003. The petition was registered as Case No.10 of 2005 and after hearing the parties, the Commission vide its order dt.13.02.2006 admitted the prayer of the opposite party and held as follows: -

“With national objective of harnessing the captive generation, the Commission directs that the terms and conditions of the second agreement entered into between the parties shall be deemed to have continued upto 31.03.2006 as the arrangement is still continuing. The commercial arrangement may have to be suitably modified in the line with the National Tariff Policy in vogue”.

3. Being aggrieved with this order, M/s. NESCO has come up with the present petition to review it on the following grounds: -
 - a) That when Commission has already held that national tariff policy does not provide for banking of energy, it should not have allowed the opposite party to extend the third agreement for a further period upto 31.03.2006, which according to the petitioner is an error apparent on the face of the record.

- b) That due to banking facility granted to the opposite party, the petitioner sustained loss during such period and that having been pointed out to the Commission by way of affidavit in Case No.10 of 2005, non consideration of such plea of the petitioner is also an error apparent on the face of the record.
4. In reply to the above review petition, the Opposite Party in its petition stated that merely because after expiry of the agreement for banking of power on 15.02.2005, a fresh agreement has been entered into between NESCO and TSIL, it does not mean that Hon'ble Commission is not competent to extend the Banking Facility till 31.03.2006. In view of the subsequent events that have taken place, the agreement dated 12.02.2005 would now be enforceable for the period remaining after 01.04.2006. As such, no error has been committed by the Commission which is apparent on the face of the record.
5. As regards the first contention of the petitioner, it is noticed that the first agreement was valid from 16.02.2003 to 15.02.2004 and the second agreement from 16.02.2004 to 15.02.2005 and after expiry of the second agreement, the third agreement was executed, and till the matter was heard by the Commission i.e. on 10.01.2006 and the order was passed on 13.02.2006, where it was specifically mentioned that the terms and conditions of the 2nd agreement entered into between the parties shall be deemed to have continued upto 31.03.06. This portion of the order has not been challenged in the review petition. The Commission's decision to allow extension upto 31.03.06 is primarily based on the understanding that the arrangement is continuing. Since this has not been challenged, we do not find an error apparent on the face of the record.
6. During the course of argument, the counsel for the petitioner admitted some error in the review petition and prayed the Commission for

necessary rectification. It was seen that in paragraph 3(i) in the second line the date has been mentioned wrongly. The date should be 15.02.2005 instead of 15.02.2006. The counsel for the petitioner requested to amend the petition as the mistake is typographical error and unintentional. The counsel for the O.P. has no objection for such amendment. The amendment is allowed.

7. During the course of hearing it came to the notice of the Commission that in paragraph 2 of the order dt.13.02.2006 in case No.10 of 2005, some apparent error has been crept into with regard to period of second agreement. It shall be 16.02.2004 to 15.02.2005 instead of 16.02.2005 to 15.02.2004. This typographical error may be accordingly get corrected.

In view of the aforesaid discussions and the conclusions arrived at, we hold that the petition for review is devoid of any merit. As such, it stands rejected.

Sd/-
(S.K. Jena)
Member

Sd/-
(B.C. Jena)
Member

Sd/-
(D.C. Sahoo)
Chairperson