

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

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

Dated Bhubaneswar the 21st July of 2006

CASE NO. 08 OF 2006

M/s Tata Steel Limited
Plot No.273, Bhouma Nagar, Unit – IV,
Bhubaneswar, Dist- Khurda

Petitioner

M/s NESCO,
Januganj, Balasore

....
... **Respondent**

For the petitioner : Mr. Shovesh Roy, Advocate
 Mr. Prabhu Prasad Mohanty, Advocate

For the respondents: 1. Mr.Sanjit Mohanty, Sr. Advocate
 2. Mr. B. K. Nayak, Advocate

ORDER

This is an application filed by M/s Tata Steel Limited for implementation of the order dated 07.03.2006 passed by the Hon'ble High Court of Orissa in W.P.(C) No.5959 of 2005.

The Ferro Alloys Plant at Joda established by M/s. Tata Steel Limited in 1958 had been receiving power supply from the erstwhile Orissa State Electricity Board (Board). The last agreement for power supply was executed between the Board and the applicant company on 16th March, 1992 for supply of 17.5 MVA loads at 11 KV subsequently increased to 19.5 MVA. While the matter stood thus M/s NESCO, a successor to the Board imposed restrictions on power supply to the said plant in March, 2003 owing to system failure in its 11 KV supply.

Having been aggrieved with this restriction, the applicant company decided to avail power supply at 132 KV and constructed a 132 KV line from Joda grid s/s upto its plant premises at an expenditure of Rs.2.5 crore.

2. On successful installation of 132 KV grid s/s and the line, the applicant company approached M/s.NESCO to supply power to its Ferro Alloys plant at Joda through a special agreement in line with agreements entered into with Ferro Alloys units like FACOR, Charge Chrome Plant, Bamnival etc. On 17th December, 2003, M/s. NESCO declined to supply power under special agreement to the company.

3. The applicant company in response to the public notice issued by the Commission on 12th December, 2004 in connection with determination of Annual Revenue Requirement and tariff for Retail Supply for the FY 05-06 by NESCO (Case No.141 of 2004) filed objections before the Commission and pleaded for fixation of viable tariff in favour of Ferro Alloys Power Intensive Industries including its own plant at Joda.

4. In paragraphs 8.26 and 8.27 of the Retail Supply Tariff order in Case No.141 of 2004, the Commission granted special tariff to the existing Ferro Alloys Industries of the state and industries which would come up in future but did not consider the case of Ferro Alloys Plant at Joda.

5. The Commission's impugned order rested upon the proposal of M/s NESCO, forceful advocacy on the part of M/s IPICOL for pro-offering incentive tariff to upcoming steel industries and other relevant factors such as historical and judicial pronouncements.

6. The Applicant Company challenged the above retail supply tariff order before the Hon'ble Court to the extent that the benefit of the discounted tariff be made available to its Ferro Alloys Unit at Joda.

7. The Hon'ble High Court of Orissa disposed of the Writ Application on 7th March, 2006, with a rider that while fixing the tariff for FY 2005-06, the objections of the company have not been dealt with by OERC and no reason has been ascribed therefor. Therefore, the Hon'ble Court directed OERC to re-hear the petitioner and pass a reasoned order as expeditiously as possible in terms of Section 62(3) of the Electricity Act, 2003.

8. Pursuant to the order of the Hon'ble High Court of Orissa in W.P.(C) No.5959 of 2005, the Applicant Company filed a petition before the Commission and the Commission heard the case on 31.5.06.

9. M/s NESCO in its rejoinder dated 5.5.06 opposed the contention of M/s Tata Steel Limited and stated as follows:-

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"5. That after public hearing, the Commission passed the Retail Supply Tariff Order dated 22.3.2005 for the FY 2005-06 relating to annual Revenue Requirement and Retail Supply Tariff Application of NESCO.

6. That, the order relating to Special Tariff for power intensive industries those who were allowed to draw power from NTPC station as per the Special Approval of CEA, Govt. of India from its unallocated quota finds place in Paragraph 8 of the Tariff order. The proposal of NESCO to allow special tariff finds place in Paragraph 8.26 of the order. The extract of Para 8.26 of the order is quoted below for reference.

"8.26. In view of the aforesaid facts, the Commission concurs with the proposal of NESCO to allow a Special Tariff to those industries which had enacted agreement(s) to avail power at the special rate from NESCO upto 09.12.2004 irrespective of the contract demand:

7. That, the petitioner in its application has alleged that the Hon'ble Commission while fixing the Retail Supply Tariff for the FY 2005-06 discriminated the petitioner-company by not extending the Special Tariff since they had not executed a special agreement with NESCO. It is submitted that the benefit of discount of 25% on energy charges upto 50% load factor was extended in the tariff structure to the industries covered under the Special Agreement and to the new industries with the contract demand of 5 MVA and above and coming into operation on or after 1.4.2005 fulfilling the different criteria as mentioned in Paragraph 8.27 of the tariff order. The said order (Paragraph 8.26.1 and 8.27.4) has no application to the petitioner since the petitioner's unit at Joda was not treated as Export Oriented Unit, while the allocation was made by the Central Electricity Authority, Govt. of India as well as the petitioner unit at Joda was also not a party in Case No.M.A.No.96 of 2000 (filed by the TISCO), in Case No.M.A. No.300/2000 (filed by the Ispat Alloys Ltd.) and in Case No.298 of 2000 filed by FACOR Ltd. in Hon'ble High Court as well as no Special Agreement has been executed by the Ferro Alloys Plant at Joda with NESCO for availing power at a concessional tariff and the unit is not coming under the new industries and has not started operation on or after 1.4.2005.

It is pertinent to submit here that those HT and EHT industries who had entered into special Agreement with NESCO and those industries who were party before the CEA for supply of off-peak power of NTPC from the unallocated quota of Govt. of India are altogether a category of consumers since all of them falling into the category of Export Oriented Unit. “

10. Two issues have been raised by M/s Tata Steel Limited. Issue No.1 is that the incentive tariff through special agreement given by the Commission in case of

M/s FACOR, Charge Chrome Plant, Bamnibal, Balasore Ispat Alloys Ltd., IDCOL Ferro Chrome Plant, Jajpur Road was not extended to them. The second issue is that the upcoming new industries were also covered under incentive tariff whereas their company was debarred from it.

11. It is necessary to examine both the issues as above before coming to any conclusion. The four Ferro Alloys Units i.e. M/s FACOR, Charge Chrome Plant, Bamnibal, Balasore Ispat Alloys Ltd., IDCOL Ferro Chrome Plant, Jajpur Raod have been given incentive tariff, based on the proposal of M/s NESCO which categorically stated that if concessional tariff is not extended to these units they may close down which will adversely affect the business of M/s NESCO. Such a situation arose in the past as a result of which NESCO financially suffered a great deal. In fact, NESCO has offered concessional tariff to these four units as will be seen from their ARR filing. By this arrangement, NESCO has not sought to pass on the differential amount on account of giving a lower tariff as compared to the existing retail tariff as a result the consumers are not affected.

12. Furthermore, the Hon'ble High Court of Orissa while disposing of the Case No.MA No.285/2000, 298/2000, 299/2000 and 300/2000 have very exhaustively dealt with the reason for which such special agreement should be extended to these parties and concluded that the Ferro Alloys Export Oriented Units (EOUs) of the state can enter into special agreement for supply of power at a lower rate of power than what is fixed by the OERC. Accordingly, M/s NESCO had entered into special agreement with the above mentioned four EOUs and submitted the agreement for approval of the Commission. While disposing the case No.141 of 2004 the Commission accorded approval to the said agreement.

13. The Hon'ble High Court of Orissa while disposing of the writ application had observed that the Commission had not considered the case of the petitioner company in terms of the mandate under Section 62 of the Electricity Act, 2003.

Further, the Court had also observed that while fixing the tariff, the case of the petitioner had not been dealt with and no such reason had been ascribed.

14. We are of the opinion that complete reading of Para (8) of Retail Supply Tariff order for FY 2005-06 (Case No.143/04) under the heading Special Tariff Power Intensive industries covering sub-paras 8.1 to 8.30 gives a chronological development and analysis leading to the fixation of tariff for the power intensive industries. Reading of para 8.26 alone may not convey the reason as to why a special tariff was fixed for a group of industries.

15. While determining in retail supply tariff, the Commission has relied on Section 62(3) of the Electricity Act, 2003 whose consideration has been given for (i) Geographical position of the area (ii) the nature of supply (iii) the purpose for which the supply is required. It was also argued on behalf of NESCO, the Respondent, that in the instant case the 'purpose of use' by the industries who were granted special tariff is different from the Ferro Alloys Plant of Joda though the nature of supply like voltage and load factor were same. In this connection, a reference may be made to the Hon'ble Supreme Court of India order published in AIR 1975 SC 1976 (1975 2 SCC 414, 422/24) in the case of Indian Aluminum Company Vrs. Keral State Electricity Board. The Apex Court has observed that "even where uniform tariffs are fixed for a particular category of consumers, the application of uniform tariffs to all consumers falling within the category, irrespective of their distinctive features may sometime defeat the object of promotion of electrical development and industrial growth and progress. There may arise individual case where having regard to special circumstance, it may be found necessary to make departure from the uniform tariff and to fix special tariff for them". Sub-section (3) of Section 49 of Electricity Supply Act, 1948 therefore provides that Board shall have power "if it considers necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of supply and purpose for which supply is required or any other relevant factors."

There is enough similarity between Section 49 of the Supply Act, 1948 and Section 62 (3) of the Electricity Act, 2003 which is quoted below:-

[“Provision for the sale of electricity by the Board to persons other than licensees. (1) Subject to the provisions of this Act and of regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any or the following factors, namely:

(a) the nature of the supply and the purposes for which it is required.

(b) the co-ordinated development of the supply and distribution of the electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;

(c) the simplification and standardization of methods and rates of charges for such supplies;

(d) the extension and cheapening of supplies of electricity to sparsely developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) *In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person.]”*

16. This sub-section confers power on the Board to fix special tariff for a consumer depending upon the geographical position of the area, the nature of supply, the purpose for which supply is required and other relevant factors if it so warrants.

17. We would like to iterate that the special tariff allowed to the four Ferro Alloys industries is a legacy of the past based on the recommendations of the licensee. It had become necessary as these units for several years have had the benefit of the status of Export Oriented Units which the Applicant Company does not have. To that extent, the ‘purpose of use’ by these consumers is different from the petitioner company or any other similarly placed electricity consumers for the State. When we say similarly placed industries we mean industries availing power supply at EHT and consuming power at a very high load factor.

18. The Hon’ble Supreme Court further goes to say that “It would, therefore seem clear that the Board can in exercise of the power conferred under sub section (3) of Section 49, enter into an agreement with a consumer stipulating for a special tariff for supply of electricity for a specific period of time. Such a stipulation would amount to fixing of a special tariff and it would clearly be in exercise of the powers to fix special tariff granted under sub-section (3) of Section 49.”

19. The raison d’etre of this judgment can be applied mutatis mutandis to the order of the Commission in the instant case.

20. The reading of the judgment of the Hon’ble Apex Court makes it clear that the object of promotion of electrical development and industrial growth and progress even for a consumers falling within the category there may arise

individual case to make departure where special circumstance exists. It is because of that consideration the Export Oriented Units have been treated on a separate footing from other power intensive class of consumers to which these Export Oriented Units belongs. The purpose of use by the Applicant Company is different from the purpose of use by the 4 other Export Oriented Industries for which it is appropriate that there could be difference of tariff between these two categories.

21. The other important criteria is the revenue requirement of the Utility and the revenue realizable from different class of consumers which should ideally be adequate to meet the expenditure of the Utility and other expenses as allowed in the Act. While disagreeing with the request for sanction of special tariff to the Applicant we hold that application of that tariff on the basis of load factor and voltage ignoring the purpose of use would result in licensee's huge revenue gap. To bridge this gap in revenue it will require upward revision of tariff for all classes including domestic, irrigation and other categories of consumers. Obviously, this will not serve the public interest.

22. The second issue i.e. why the incentive tariff as applicable to upcoming industries was not extended to M/s Ferro Alloys Unit, Joda has been discussed as follows. In this connection, the tariff order for FY 2005-06 Para 27 and 28 reads as under:-

"8.27. The Commission takes into consideration the presentation made by IPICOL regarding addition of new industries particularly in the steel sector. The Commission is desirous of encouraging new industries in the State. Therefore, the Commission has decided to provide financial incentive in the form of discount for higher consumption to attract new industries. It is hoped that higher sale will compensate the discount being offered to the industries. The conditions for grant of discount is as follows:-

8.27.1 *The industries must agree for drawal of power at least for a period of one year.*

8.27.2 *They may give a monthly guaranteed minimum off take at the load factor of 80%.*

8.27.3. *The load factor shall be calculated in the manner prescribed in Clause 2(y) in OERC Distribution (Conditions of Supply) Code, 2004.*

8.27.4. *The existing tariff for industrial EHT and HT consumers has been indicated in the table. Without changing the tariff structure, new industries with contract demand of 5 MVA and above coming into operation on or after 01.4.2005 fulfilling the aforesaid criteria will be allowed a discount of 25% on the energy charge upto 50% load factor in the existing tariff.”*

8.28 *During the course of the public hearing, it was brought to the notice of the Commission by mini steel plant consumers that there could be a boom in the sector if electricity tariff could be reduced to make these entities commercially viable. M/s IPISTEEL, Dhenkanal pleaded vehemently to provide lower tariff as it is an industry referred to BIFR. The Commission took these appeals into consideration and directed that discount **for a period of one year** would be available to the mini steel plants - both existing and upcoming at the rate of 20% in the first slab upto 50% load factor provided they fulfill the conditions as stated in para 8.27 above. The above order would be reviewed after one year to ascertain how far this concessional tariff has boosted load growth.*

23. Based on a specific request made by M/s IPICOL in reference of the upcoming industries having 5 MVA and above were provided with an incentive tariff. In the tariff order with a stipulation that the order would be reviewed after six months to ascertain whether there has been substantial growth of industries by providing this incentive tariff. Accordingly, while disposing of the ARR for FY 2005-06 of the distribution utilities, the said concession was withdrawn as it was found that there was no appreciable growth of industries under this category. The relevant portion of tariff order in Case Nos.44, 45, 46 & 47 of 2005 is quoted below:-

“Para 6.38.1 Some of the objectors pleaded for different tariff for sub-categories like, steel industry, cement industry, food processing industry within the large industry category. A study of the tariff structure and HT/EHT would show that, the tariff structure is fully rationalized. The rates are uniform for consumers with contract demand 110 KVA and above receiving power either at HT/EHT except for the emergency power supply to the captive power plants and for consumers with CD 100 MVA and above. It includes consumers like general purpose, public water works and sewerage, pumping, large industry, power intensive industry, mini steel plant, railway traction and heavy industries. The per unit rate of electricity is equal for such category of consumers provided that the power factor and load factor remains same at HT or EHT. This is an indicator of moving towards cost based tariff structure. In fact, all HT/EHT categories can be rolled into one but for the differentiation in electricity duty imposed by the Govt. For the reasons explained above, the Commission, therefore, does not consider it necessary to differentiate between various classes of consumers except where it is legacy for the past for some specific reasons.

Para 6.38.2 Considering the presentation made by IPICOL regarding addition of new industries particularly in the steel sector and in order to

encourage new industries in the State, the Commission in its last tariff order for FY 2005-06 provided financial incentive in the form of discount for higher consumption. It was hoped that higher sale would compensate for the discount being offered to the industries. The order stipulated that, new industries with contract demand of 5 MVA and above coming into operation on or after 01.04.2005 fulfilling the criteria will be allowed a discount of 25% on the energy charge upto 50% load factor in the existing tariff. But it was observed that, no such industry had come forward after 01.04.2005 to avail this benefit which simply remained on paper. Hence, it is not considered necessary to continue this facility on 2006-07.”

24. In view of the above, the Commission does not consider it appropriate to fix a discounted tariff for the Applicant Company at par with the industries covered under Export Oriented Units.

This disposes off the petition filed before the Commission.

Sd/-
(S.K. Jena)
Member

Sd/-
(B.C. Jena)
Member

Sd/-
(D.C. Sahoo)
Chairperson