

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

**Present : Shi B K Das, Chairperson
Sri S K Jena, Member
Sri K C Badu, Member**

Case No. 11/2006

M/s Jayshree Chemicals Limited (JCL)

... Petitioner

- Vrs -

South Eastern Electricity Supply Company of
Orissa Limited (SOUTHCO)

... Respondent

Date of Hearings : 01.06.2006, 22.06.2007, 31.07.2007 and 23.10.2007
Date of Order : 01.12.2007

ORDER

- 1.0 M/s Jayshree Chemicals Ltd. (JCL), Ganjam filed an application on 29.04.2006 for review of Commission's Retail Supply Tariff Order dtd. 23.03.2006 for FY 2006-07 to extend Special Tariff to the Petitioner's unit as has been extended to other similar power intensive industries of NESCO. The application of the Petitioner was registered as Case No. 11 of 2006.
- 2.0 The Commission vide Letter No. 05.05.2006 intimated JCL to rectify the following defects by 15.05.2006 failing which the petition would be rejected as per law.
- (i) To clarify that no appeal has been preferred against the order on which review is sought for.
 - (ii) To file Commission's order against which review is sought for.
 - (iii) To file Appellate Tribunal's Order dt. 04.04.2006.
- 3.0 JCL vide Letter No. 629 dtd. 15.05.2006 gave an undertaking that they had not filed any appeal before the Court / Forum / Tribunal against order dtd. 23.03.2006 of the Commission. As per Commission's directive, JCL also filed copies of the

order dtd. 04.04.2006 of the ATE and the order dtd 23.03.2006 of the Commission.

4.0 As the defects have been removed / rectified, the Commission vide Letter No. 777 dtd. 19.05.2006 issued notice to JCL and SOUTHCO to attend the hearing on 01.06.2006 on the question of admission.

5.0 Accordingly, the case was taken up for hearing on 01.06.2006. During hearing Mr. Ashok Kumar Parija, Sr. Advocate for the petitioner and Mr. B N Ray, Sr. Adviser, SOUTHCO for the respondent were present. While hearing Mr. Parija, it was revealed that the issue relating to tariff for the year 2005-06 was sub-judice before the Hon'ble Supreme Court. Although the matter before the Commission was relating to FY 2006-07, but the same issue was under consideration before the Hon'ble Apex Court for which the Commission was inclined not to proceed with the hearing of the present case. However, at the request of Mr. Parija, the Commission decided to issue notice to the respondent to file the copy of the petition along with interim order if any thereon by 20.06.2006. Mr. Parija was also instructed to intimate the Commission in advance whether he would proceed with the present case or would wait till the matter is disposed of by the Hon'ble Apex Court.

6.0 The Hon'ble Supreme Court during hearing on 28.08.2006 ordered as under:

“In this appeal we had simply issued notice on 10th May, 2006, and had not passed any order on interim relief. The issue, in the present case, relates to fixation of Tariff for the year 2005-2006. In relation to subsequent years, i.e., 2006-2007, Case No. 11 of 2006 is pending before the Orissa Electricity Regulatory Commission (for short, ‘the Commission’), which by order dated 1st June, 2006, has passed an order postponing hearing of the said case awaiting decision of this Court in the present appeal. In our view, it is not necessary for the Commission to await decision of this appeal for Review of Retail Supply Tariff for the financial year 2006-07.

Appeal admitted.

The prayer for interim relief is refused. But the Commission is directed to proceed with Case No. 11 of 2006, as directed above, in accordance with law.”

- 7.0 The Commission vide Letter No. 1647 dtd. 25.09.2006 issued Notice to SOUTHCO - the respondent to file reply on the application of JCL – the petitioner by 10.10.2006 serving a copy to the Petitioner.
- 8.0 SOUTHCO vide affidavit dtd. 09.10.2006 prayed before the Commission to allow one month time for filing the counter as the stand of SOUTHCO on the issues raised in the petition could be decided only after consultation with Special Officers appointed by ATE for SOUTHCO, WESCO and NESCO.
- 9.0 SOUTHCO in their reply affidavit dtd. 20.06.2007 briefly submitted as under:
- (a) That the present application is filed by the petitioner M/s JCL for extension of special tariff as has been extended to different power intensive industries of NESCO as per Clause 6.44 of RST order dtd. 23.03.2006 for the FY 2006.07.
 - (b) That Hon'ble OERC has not considered the special tariff for SOUTHCO vide its RST order dt. 23.03.2006. As per Clause 6.44 of the said order, the special tariff is applicable as per RST order dtd. 22.03.2005, which is applicable for power intensive industries of NESCO only.
 - (c) That Hon'ble OERC vide its order dtd. 12.08.2005 allowed the consumer to pay consolidated charges for monthly energy consumption at a rate Rs.2.40 per unit calculated at the actual load factor subject to a minimum guaranteed off take of 80% LF. The consumption of LF will be on monthly basis. The agreement was valid for the period of one year i.e. from 01.04.2005 to 31.03.2006.
 - (d) That the consumer has been insisting to allow special tariff as approved to PI industries of NESCO by the Hon'ble Commission and requested for entering into a special agreement during 2006-07.
 - (e) That the Hon'ble Commission has increased the rate of BST by 17 paise for the FY 2006-07 in the tariff order dtd. 23.03.2006 for the Respondent SOUTHCO. The average monthly impact due to this increase in tariff, is to the tune of Rs. 255 lakhs per month towards BST bill payable to GRIDCO/OPTCL.

- (f) That due to factors like high interest burden on the existing loans, a large LT base, non-enhancement of RST during the control period by the Regulatory Commission, the SOUTHCO is reeling under severe financial crisis and not in a position to accommodate any further concession to consumers.
- (g) That already a revenue gap of (-) Rs. 51.34 Crores has been approved by Hon'ble OERC for the FY 2006-07 and any further concession will affect the Respondent adversely.
- (h) That the Petitioner has reduced the contract demand from 10.00 MW to 8.00 MW from July – 2006. The total consumption made during the FY 2006-07 against the reduced contract demand of 8.00 MW is 78.09 MU and the billing was Rs. 21.21 crores and hence the average rate comes to Rs. 2.716 or say Rs. 2.72 P/U. The Petitioner unit has availed all the benefits given under RST for Power Intensive Industries viz TOD tariff, Power factor incentive, Prompt payment incentive and concession of 120% of contract demand on maximum drawl during off-peak hours. The average demand drawn by the unit is 10,400 KVA during the year against the contract demand of 8,888 KVA without attracting over drawl penalty.
- (i) There will be additional burden of Rs. 2.50 Crores against SOUTHCO incase special tariff is given to M/s JCL at par with NESCO against RST rates apart from Rs. 1.00 Crores towards additional cost incurred by SOUTHCO towards payment of BST totaling to Rs. 3.50 Crores.
- (j) The Petitioner industry is not eligible to get Special tariff for FY 2006-07 as it has entered into a reduced contract demand of 8.00 MW w.e.f. 1st July-2006 on 27.07.2006 in the standard agreement form abiding the rate of RST. As per the earlier special agreements entered into by the petitioner with SOUTHCO, the minimum requirement of load for getting Special tariff is 10 MW and hence the Petitioner is not entitled for Special tariff during 2006-07.

- (k) The Petitioner Industry has made operational and net profit during FY 2004-05, 2005-06 and 2006-07 as per Balance Sheet submitted by JCL. Hence there is no merit in the claim of the Petitioner for Special Tariff for FY 2006-07.

Financial Position of M/s JCL, Ganjam for the last three years.

(In Rs. Lakhs)		
Financial Year	Operational Profit	Net Profit
2004-05	231.19	297.31
2005-06	894.06	1008.51
2006-07	349.24	377.22

- (l) The Respondent Company has incurred loss of Rs. 6834.44 Lakhs, Rs. 9262.79 Lakhs and Rs. 2975.38 Lakhs respectively during FY 2003-04, 2004-05 and 2005-06 and accumulated loss stands at Rs. 53479.39 Lakhs upto 2005-06.

SOUTHCO, therefore, prayed in their affidavit dated 20.06.2007 that the request for Special Tariff by JCL for FY 2006-07 has no merit and is liable to be dismissed.

- 10.0 The Commission vide Letter No. 864 dated 05.06.2007 issued Notice to JCL and SOUTHCO to attend the hearing on 22.06.2007.
- 11.0 Accordingly, the matter was taken up for hearing on 22.06.2007. During hearing Mr. S S Kalya, Vice President (Fin & Adm.) and Mr. T P Sahu, Sr. GM, were present on behalf of JCL and SOUTHCO respectively. JCL – the petitioner prayed for time for hearing of this case. The Commission allowed the prayer and adjourned the hearing to 31.07.2007.
- 12.0 The Commission vide Letter No. 1029 dtd. 25.06.2007 issued notice to JCL and SOUTHCO to attend the hearing on 31.07.2007.
- 13.0 Accordingly, the case was taken up for hearing on 31.07.2007. Mr. Ashok Kumar Parija, Sr. Advocate was present on behalf of JCL - the petitioner, Mr B K Nayak, Advocate and Mr. B N Mallick, AGM were present on behalf of SOUTHCO – the Respondent. Mr. Parija, Sr. Counsel submitted on behalf of JCL that similar matter is now pending before Appellate Tribunal for Electricity (ATE). He, therefore, prayed before the Commission for adjournment of hearing for four

weeks. Mr. Nayak counsel of SOUTHCO agreed to the request of JCL. The Commission agreed to the aforesaid request of the petitioner JCL for adjournment of hearing by four weeks.

14.0 The Commission vide Letter No. 1744 dated 05.10.2007 issued notice to both JCL and SOUTHCO to attend the hearing on 23.10.2007.

15.0 Accordingly, the matter was taken up for hearing on 23.10.2007. Mr Ashok Kumar Parija, Sr. Advocate and Mr. B N Mallick, AGM (Commercial) were present on behalf of JCL and SOUTHCO respectively. The Commission heard both the parties at length and directed both the Petitioner and Respondent to file their note of arguments within seven days.

15.1 Mr B N Mallick, AGM (Com.) on behalf SOUTHCO submitted during the hearing as under:

- (a) The Retail Supply Tariff and ARR for SOUTHCO for 2005-06 is pending before the Hon'ble Supreme Court for disposal.
- (b) JCL has reduced the contract demand from 10 MW to 8 MW.
- (c) The additional burden on SOUTHCO shall be to the tune of Rs. 3.50 crores during FY 2006-07 if the Special Tariff is allowed to JCL as prayed in their petition.
- (d) JCL has been making profit since FY 2004-06 where as SOUTHCO is making loss. Any further incentive to JCL will enhance their profit but will add further loss to SOUTHCO.

In the light of the above, Mr Mallick prayed before the Commission not to allow any Special Tariff in favour of JCL during FY 2006-07.

15.2 As per the directive of the Commission Sri A K Parija, Sr. Counsel for JCL filed the written submission on 29.10.2007 which are briefly stated as under:

- (a) That since the net worth of the Petitioner's Company stood completely eroded, it filed application before the Board for Industrial and Financial Reconstruction, New Delhi, hereinafter for

the sake of brevity referred to as BIFR. On 17.01.2000 the Petitioner Company was declared as sick industry by the BIFR. The State Bank of Bikaner and Jaipur was appointed as operating agency by the BIFR and a scheme for revival of the industry was prepared by the operating agency and approved by the BIFR wherein several benefits and concessions were extended to the Petitioner Company.

- (b) That it may further be stated that on 02.01.2003, a review hearing was conducted by the BIFR to monitor the progress of the rehabilitation of the Petitioner Company. In course of the said meeting it was interalia submitted by SOUTHCO.

“.. On further query by the Bench, the representative of SOUTHCO submitted that the extension of special incentive tariff for a further period of 5 years w.e.f. 1.7.2002, as recommended by MA, would be considered at the appropriate time, i.e. when the tariff would be considered/reviewed by Orissa Electricity Regulation Commission(OERC).”

Based on this representation of SOUTHCO, it was interalia directed;

“(v) SOUTHCO is directed to consider extension of special incentive tariff for a further period of 5 years w.e.f 1.7.2002 at the appropriate time.”

- (c) That from the year 2002 onwards special agreement were entered into between the Petitioner Company and SOUTHCO for supply of electricity at the rate of Rs. 2.40 paise per unit. The last of such special agreement was entered into on 29.04.2005. SOUTHCO thereafter approached this Hon’ble Commission for approval of the same. The said application of SOUTHCO was registered as Case No. 21 of 2005.

- (d) That this Hon'ble Commission by order dated 12.08.2005 was pleased to approve the special agreement for supply of power to the Petitioner Company at the rate of Rs. 2.40 paise per unit. It may be stated that during the relevant period the retail supply tariff was Rs. 2.90 paise per unit.

This Hon'ble Commission while approving the special agreement held as follows:-

“...The Commission feels that there will be no loss of revenue to SOUTHCO as per its own submission. As such, any compensation for loss due to special tariff in future ARR of SOUTHCO is ruled out.”

- (e) That on 29.11.2005 SOUTHCO filed its ARR for the financial year 2006-07, wherein it had specifically represented that it wanted to supply power to the Petitioner Company at Rs. 2.40 paise per unit. Obviously this was based on the representation made by SOUTHCO before the BIFR.

- (f) That being aggrieved by the retail supply tariff order for the financial year 2006-07, the Petitioner Company filed the present application seeking for concessional tariff. In response to the said application, SOUTHCO filed its reply on 31.05.2006 stating interalia.

(iv) That, Hon'ble OERC vide its order dtd. 12.08.2005 allowed the consumer to pay a consolidated charges for a monthly energy consumption at a rate Rs. 2.40 per unit calculated at the actual load factor subject to a minimum guaranteed off take of 80% LF. The computation of LF will be on monthly basis. The agreement was valid for the period of one year i.e. from 01.04.2005 to 31.03.2006.

(vi) That, the consumer vide its letter No. JCVP/271/2006-07 dtd. 20.04.2006 indicated that in case the special tariff is not approved, the consumer shall discontinue drawing power from 1st July 2006 and also requested to terminate the agreement from the said date.

(vii) That, consumer had also applied for additional requirement of power of 10 MW in between April 07 to September 07 for expansion of caustic soda plant with membrane technology 100 TPD vide its letter No. JCVP/700/2006-07 dtd. 17.05.2006 and also requested for firm commitment regarding special tariff which has been made available to other PI industries of NESCO for a period of 3 years.

(ix) That, the consumer has been utilizing about 75 MU per annum for the last 3 years with monthly off take of more than 80% LF and also contributing handsome amount to SOUTHCO's cash flow. In case the same is discontinued the cash flow of SOUTHCO would be badly affected. It may please be noted that the consumer is only the PI industry in SOUTCO and consuming 33% of total HT category.

SOUTHCO finally prayed as follows:-

“It is therefore prayed that, the special tariff as proposed by SOUTHCO in ARR of 2006-07 along with impact of rise in BST may be considered if Special Tariff would be allowed to M/s. JCL by Hon'ble Commission.”

- (g) That however, surprisingly SOUTHCO filed its second reply on 22.06.2007, obviously as an after thought praying as follows:-

“It is therefore prayed that, the request for special tariff made by M/s. JCL for 2006-07 has no merit in the circumstances and hence liable to be dismissed as there is no cause of action existing at present.”

- (h) That in the month of July 2006, the Petitioner Company reduced its contract demand from 10 MW to 8 MW.
- (i) That the Petitioner Company was discharged from being a sick company by the BIFR on 30.12.2005. However, in the said order it was specifically stated:-

“The un-implemented provisions of the SS-02 including those provisions/directions subsequently issued by the Board, as also stated in the foregoing paragraphs, would continue to remain in full force for the un-expired period of the SS-02 and would be continue to be monitored by the company.”

The said order has been accepted by SOUTHCO as no appeal has been preferred. Hence the same has attained a finality.

- (j) That from the above facts the following position emerges:
- (i) SOUTHCO had unequivocally stated before the BIFR that the extension of special incentive tariff for a further period of 5 years w.e.f. 1.7.2002, as recommended by MA, would be considered at the appropriate time, i.e. when the tariff would be considered/reviewed by Orissa Electricity Regulatory Commission(OERC).

Based on such assertions BIFR had directed as follows:-

“(v) SOUTHCO is directed to consider extension of special incentive tariff for a futher period of 5 years w.e.f. 1.7.2002 at the appropriate time.”

- (ii) Even on the discharge order dtd. 30.12.2005, it has been directed as follows:-

“The un-implemented provisions of the SS-02 including those provisions/directions subsequently issued by the Board, as also stated in the foregoing paragraphs, would continue to remain in full force for the un-expired period of the SS-02 and would be continued to be monitored by the company.”

- (iii) SOUTHCO had themselves proposed to supply power to the Petitioner Company at the rte of Rs. 2.40 paise per unit in its ARR dated 29.11.2005.

- (iv) This Hon'ble Commission while approving the special agreement on 12.08.2005 has rendered a finding that there will be no loss of revenue to SOUTHCO as per its own submission. As such, any compensation for loss due to special tariff in future ARR of SOUTHCO is ruled out.
- (v) That in the first response filed by SOUTHCO to the present proceeding before this Hon'ble Commission that it was prayed that SOUTHCO had no objection to supply power to the Petitioner company at the rate of Rs. 2.40 paise + 0.17 paise that has been increased in BST rate. In other words SOUTHCO is willing and ready to supply power to the Petitioner Company at the rate of Rs. 2.57 per unit in the special agreement.

Shri A K Parija Sr, Counsel therefore submitted that in view of undertaking given by SOUTHCO before the BIFR and in view of the orders passed by the BIFR, SOUTHCO is under obligation to extend special agreement tariff i.e. Rs. 2.40 paise/kwh till 2007. He further submitted that since the BST has been increased by Rs. 0.17 Paise, the Hon'ble Commission may kindly direct SOUTHCO to supply power to the Petitioner Company at the rate of Rs. 2.57 per unit recomputing the bills treating the contact demand as 10 M.W.

16.0 After hearing both the parties, the Commission directs the following:

- (i) SOUTHCO has submitted that the average rate for consumption by JCL as billed for 2006-07 comes to 272 paise/unit.
- (ii) Against the Tariff of 272 paise/kwh, JCL requested for a tariff of 257 paise/kwh which is less by about 15 paise/unit.
- iii) JCL has also agreed that the monthly bill for the FY 2006-07 may be recomputed with a CD of 10 MW.

- iv) JCL has submitted that SOUTHCO had agreed before BIFR to extend special agreement tariff for continuance of JCL as a consumer under SOUTHCO.

It is evident that there is a desire between the consumer and the licensee to continue their relationship so that such an action could be commercially beneficial to both the entities.

- v) Open access for all consumers exceeding 1 MW have been allowed w.e.f. 1st April, 2008 and JCL will be free to avail the same if it so desires. Hence, it is left to JCL and SOUTHCO to act appropriately.
- vi) The financial year 06-07 has already come to an end. Let both the parties mutually work out a figure and any discount given by SOUTHCO shall obviously be not allowed as a pass through in tariff but have to be met out of the efficiency gain by the utility. In fact, it has been a consistent stand of the Commission to allow special agreement only in cases where there is mutual settlement between the parties without any impact on other consumers of the state.

This disposes of the petition.

Sd/-
(K.C. Badu)
Member

Sd/-
(S.K.Jena)
Member

Sd/-
(B.K.Das)
Chairperson