

**ORISSA ELECTRICITY REGULATORY COMMISSION**  
**BIDYUT NIYAMAK BHAWAN**  
**UNIT-VIII, BHUBANESWAR - 751 012**  
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**Present :**      **Shri B K Das, Chairperson**  
                      **Shri K.C. Badu, Member**  
                      **Shri B.K. Misra, Member**

**Case Nos. 63/2006 & 03/2007**

M/s. OPTCL, Janpath, Bhubaneswar

... **Petitioner**

- Vrs -

1. Director (Engg.), OERC
2. MD, IPICOL, Bhubaneswar
3. CMD, GRIDCO, Janpath, Bhubaneswar
4. M/s. NESCO, Balasore
5. M/s. CESU, Bhubaneswar
6. M/s. SOUTHCO, Berhampur
7. M/s. WESCO, Burla
8. M/s Hind metals & Industry
9. M/s Rawmet Ferrous Industry

## ... Respondents

AND

M/s. Project Development Consultants

.... **Petitioner**

- Vrs. -

Orissa Power Transmission Corporation Ltd. (OPTCL)

.... **Respondent**

**In the matter of** : Review of the order dtd.22.07.2006 passed by the Commission  
in Case No.36/2005

**Date of Hearing : 18.01.2011**

**Date of Order: 26.04.2011**

## ORDER

Sri N. C. Panigrahi, Sr. Advocate, Shri L. N. Mohapatra, Advocate & Sri S.R. Panigrahi, Advocate on behalf of OPTCL in both case Nos. 63/06 & 03/07, Ms. Happy Patanaik & Sri P.P. Mohanty, Advocate on behalf of M/s. Rawmet Ferrous Industries Ltd/ TS Alloys Ltd, Shri R. P. Mohapatra, authorized representative of M/s Hind Metals and Industries Ltd., Sri K.C. Mohapatra, Chairman PDC in Case No.03/2007, Sri Lingaraj Padhi, DGM(Com.), CESU and , Sri P.K. Sahoo, SE, (RA), WESCO in Case No. 63/2006 are present. Nobody is present on behalf of NESCO, SOUTHCO, IPICOL & GRIDCO. The counter reply along with citations filed by OPTCL to the petition of M/s. Rawmet Ferrous Industries Ltd and the citations filed by M/s. Rawmet Ferrous Industries Ltd. in support of its petition during hearing are taken into record.

**Background of the case:-**

2. Before going into the merit of the present review petition filed by M/s OPTCL, it would be proper to first of all go through the background of the case under which the present review petition has been filed. During the performance review of the distribution licensees it was brought to the notice of the Commission, the considerable delay in execution and non-completion of critical transmission lines by OPTCL, and difficulties being faced by EHT consumers for getting power supply due to bottlenecks in transmission. The Commission after taking into account of the objections/suggestions made by the distribution licensees, initiated a suo motu proceeding in Case No. 36 of 2005 by impleading all the stake-holders of the Orissa Power Sector including the Govt. of Orissa, IPICOL the nodal agency for industrial development in the state and PGCIL as parties to such suo motu proceedings.
3. The Commission after having heard all the stake holders and other interested parties, by an order dated 22.7.2006 disposed off the suo motu proceeding in Case No. 36 of 2005. The relevant paragraph of the Commission's order for the purpose of the present case are as follows:-
  - a) The OPTCL is committed to follow the National Electricity Policy of Govt. of India for growth of intra-state transmission. (Para 14 of the order).
  - b) Regarding the question as to who should bear the cost of EHT line from the Load centre up to the consumer premises, and how the cost has to be recovered and shared, as this stretch of transmission line is only intended for giving power supply to a single EHT consumer and in rare case to more than one consumer, the Commission in para 25 of the order have held that for sharing the cost among OPTCL, the distribution company and the EHT consumer, the provisions laid down in the National Electricity Policy/The Tariff Policy issued by the Govt. of India for growth of transmission network are very relevant. This will constitute the basis for deciding the sharing of cost among OPTCL, the EHT consumer and the distribution licensee for the transmission line from the load centre upto the consumer premises. The Commission in para 26 of the order have further clarified that, OPTCL is the licensee for transmission and possess expertise in the field of transmission. The feeders emanating from the grid substations upto the consumer premises for the EHT consumer can be treated as an exclusive feeder. The recovery of cost of such transmission line

constructed by the OPTCL can be done by following the remunerative norms from the revenue generation through levy of transmission charge. Yardstick shall have to be applied for investment in transmission so that where the scheme is non-remunerative; a portion of investment has to be borne by the customer (Para 25 and 26 of the order).

- c) For calculating the remunerative norms for construction of EHT lines , the Commission in para 27 of the order have held that, a procedure has already been prescribed through Regulation for determination of remunerative norms of distribution network. **The same concept can mutatis mutandis be applicable for creation of transmission net work** ( para 27 of the order).
- d) The licensee shall undertake Cost-benefit analysis of the scheme of power supply in order to ascertain whether the remunerative supply scheme is technically feasible. [ Para-27(1) of the order].
- e) When a consumer is asked to undertake the capital work, the estimated cost shall be calculated on the aforesaid basis. The licensee is entitled to get 6% of the total estimated capital expenditure towards inspection fees for checking and ensuring that the capital works has been done as per the standards pertaining to safety and security. The licensee should ensure inspection of works by the Electrical Inspector. [ Para-27(4) of the order].
- f) The Commission finds no justification for collection of Rs.10 lakh per MW from the prospective consumer for construction of lines and s/s upto the load centre to be developed by OPTCL after due regulatory approval which has to be financed by OPTCL following prudent financial practices. However, the Commission shall have no objection if prospective consumers come forward voluntarily for giving loan to the transmission company at the prevailing bank rate. ( Para 29 of the order)

**Review Application filed by M/S OPTCL:-**

- 4. M/s OPTCL has come up with the present petition to review the above order dt.22.07.2006 of the Commission passed in Case No.36 of 2005 and it has prayed:
  - (i) to exempt from the duties/responsibility for power supply to EHT consumers which falls under the domain of Distribution licensees;
  - (ii) to allow supervision charge @ 16% over the total project outlay in lieu of 6% allowed; and

- (iii) to permit OPTCL to collect Rs.10 lakh/MW as infrastructure loan as is being collected to ensure commitment from and realistic assessment of power projection by the prospective EHT consumers till such time a mechanism is developed on cost sharing between DISTCOs/GRIDCO/OPTCL and approved by OERC.

5. OPTCL has given the following reasons for review of the Commission's order dt.22.07.2006.

- i) OPTCL (STU/Transmission Licensee) does not have any direct commercial linkage with any EHT consumers (existing and prospective) for power supply or sharing mechanism of cost for the purpose of extension of dedicated EHT lines.
- ii) Obligation to supply on request rest with the concerned distribution licensee for any voltage level under Sec.43 of the Electricity Act, 2003 .
- iii) Reg.11(ii), 12(1)(b), 13 & 15 of the OERC Distribution (Conditions of Supply) Code, 2004 does not provide scope for OPTCL to frame an estimate.
- iv) The EHT line from the STU/OPTCL's system to the EHT consumers premises does not come under its purview as per Sec.2(16), 2(72), 14, 39 of the Act and Reg.2(1)(ii) of the OERC Distribution (Conditions of Supply) Code, 2004 and Reg. 1.19(123) and 4.15(2) of the Orissa Grid Code.
- v) Even if the job is entrusted to OPTCL under Sec.41 of the Act, 6% supervision charge is too small and it should be 16% as per GRIDCO's circular dt.17.04.97.
- vi) Infrastructure loan of Rs.10 lakh/MW collected from the prospective EHT consumer is to upgrade the system and dissuade them not to back out after the facility is made available to them. Further Rule 3.7.21 of Orissa Public Works Department Code (OPWD Vol-I) stipulates giving advance to contractors under certain cases. This is also backed by para 4.10.2 of manual for procurement of works issued by Ministry of Finance Which provides mobilization advance.

**Reply/objection filed by Distribution Licensees to the review petition:-**

6. The Respondents NESCO, WESCO & SOUTHCO vide their affidavits dt.24.06.07, 23.06.07 & 23.06.07 respectively have agreed with the contention of OPTCL that it has no direct commercial linkage with any EHT consumers and the obligation of supply directly rests with the DISTCOs. They have stated that the responsibility of supplying

power to the 132 KV consumers lies with the STU as per the present, DISCOMs operate only upto 33 KV line. They have further pleaded that OPTCL should construct and maintain 132 KV and above lines of the EHT consumers. They have not agreed with OPTCL that it has got no back up arrangement for recovering the cost, since the remunerative scheme is calculated taking into consideration their expenditure and recovery within a period of 1 year. Further, OPTCL works out the cost benefit analysis while making capital investment for construction of EHT lines. NESCO, WESCO & SOUTHCO have, however, requested the Commission to re-examine the provision of 6% supervision charges in stead of 16%. They have also requested that the collection by OPTCL for Rs.10 lakh/MW infrastructure loan from prospective EHT consumers may be re-examined.

7. CESU in its affidavit dt.25.06.07 has stated that though Sec.43 of the Act directs to DISTCOs to give power at any voltage level, however, Reg.11(ii), 12(i)(b), 13 & 15 of the OERC Distribution (Conditions of Supply) Code, 2004 does not provide any provision either for framing/service of the estimate to the prospective consumers of OPTCL or have no specification on commercial agreement for sharing of cost by OPTCL with the consumers. Hence, OPTCL may be directed to interact with the DISTCOs and GRIDCO to evolve a suitable operating mechanism for the purpose. CESU has also requested that since it has lack of expertise and skilled manpower for execution or supervision of EHT networks, the existing practice may be amended.
8. In a sense, all the four DISCOMs opine that they do not have expertise of maintaining or construction of 132 KV or above lines/system. All 132 KV or above lines (including dedicated lines) should be maintained and operated by M/s OPTCL. However, as any consumer (including consumers taking power at 132 KV or 220 KV) is the consumers of DISCOMs and, therefore, shall have commercial dealings only with DISCOM. The interface point of the consumer's drawl point shall be the interface point between M/s OPTCL and DISCOM for drawl of DISCOM's power from GRIDCO for BST billing purpose of GRIDCO and then drawl of EHT consumer from DISCOM for the billing purpose of DISCOM to the consumer at RST.

9. OPTCL, on 31.07.07, filed its supplementary submission citing the following points:
- i) Obligation to supply on request to any prospective consumer whether “EHT” or otherwise rests with the concerned Distribution licensee u/s 43 of the Act. Power to recover charges/expenditure in providing extension of line (including EHT) are also available with them u/s 45 & 46 of the Act.
  - ii) The issue of cost sharing/viability norms for extension of EHT line from OPTCL Grid S/S (i.e. interface point with Distribution licensee) to the consumer premises is applicable to the DISTCOs and not to the Transmission utility.
  - iii) It is the responsibility of OPTCL to ensure that the integration of a new EHT consumer’s line/elements with the state transmission network are healthy and safe in terms of para 4.2 of OGC. Thus the work to be executed by the beneficiary calls for supervision by OPTCL on payment of requisite supervision charges.
  - iv) The relevant information regarding supervision charges levied by some of the Transmission utilities is annexed in the supplementary submission. PGCIL-14%, Rajasthan-15%, Punjab-16%, Gujarat-15%. Later, vide submission dated 01.10.2007, OPTCL has given proof that Chatisgarh & Delhi Transco are charging 15% supervision charges.
  - v) On the observations of the statutory auditors on the audited accounts of OPTCL for FY 2005-06, the service tax on supervision charges and treatment of deposit works undertaken shall be at the cost of beneficiaries in the books of accounts of OPTCL. Hence the views of OPTCL is that the assets developed by the beneficiary on its own cost for availing power supply at EHT level can be transferred to the books of accounts of OPTCL at a nominal cost.
  - vi) Besides the above, OPTCL has filed its para-wise reply to the objections of NESCO, SOUTHCO & WESCO. It says that, Section 59 (i) of the Act does not obligate OPTCL to have commercial linkage with the EHT consumers. DISTCOs should make remunerative calculation and recover.
  - vii) OPTCL has also prayed vide affidavit dt. 04.09.2007 for not impleading M/s Hind Metals as respondent.

**Application filed by M/s Hind Metals & Industries Private Ltd.**

10. M/s Hind Metals & Industries Private Ltd. came up with a petition dt.09.08.07 to be impleaded as party and submitted its detailed petition dt.22.08.2007 wherein it prayed to the Commission to decide first about the maintainability of the review petition in case No.63 of 2006 as a preliminary issue and thereafter to proceed any further in the matter only if it is held by the commission that, the review petition is maintainable and to permit him it to file further submissions/objections relevant in the interest of justice; and to pass such other orders/directions as may be deemed fit and proper in the bonafide interest of justice.
11. M/s Hind Metals submitted that it is the obligation of OPTCL for system planning. Accordingly, OPTCL has planned to shift some of the 132 KV consumers to the newly created load centre so as to reduce pressure on Meramundali Grid S/S by establishing the switching station. Even though, no system augmentation is required, M/s Hind Metals had signed an infrastructure loan agreement with OPTCL @ Rs.10 lakhs/MW and 50% of the amount (Rs.67.5 lakhs) was deposited before availing power supply.
12. M/s Hind Metals further submitted that, the Commission in its order dt.22.7.06 in case No.36/05 have directed OPTCL to go for remunerative calculation for extension of power supply to EHT consumers, collect 6% towards inspection fee, on the total estimated capital expenditure and have held that, there is no justification for collection of Rs.10 lakh/MW from the prospective consumers for construction of lines & S/S up to the Load centre.
13. M/s Hind Metals & Industries Pvt. Ltd. was allowed to be added as a Respondent and became a opposite party in the review petition. However, the Commission vide its order dt.05.09.07 rejected the prayer of M/s Hind Metals & Industries Pvt. Ltd. that the review should be dismissed in limine and observed that the apprehension of M/s Hind Metals that this is an appeal in the guise of a review, can be suitably decided only after hearing of the concerned parties to the proceeding. M/s Hind Metals & Industries Pvt. Ltd challenging the order dated 5.9.2007 of the Commission filed a writ Petition bearing W.P.( C ) 212 of 2008 in the High Court of Orissa and the same was dismissed by the Hon'ble High Court on 5.3.2010.

**Application filed by M/s Rawmet Ferrous Industries .**

14. M/s. Rawmet Ferrous Industries who was not a party originally in Case No. 36/2005 filed a writ petition in the Hon'ble High Court of Orissa in W.P.(C) No.14529/2008 prayed for execution of the order dtd.22.7.06 passed by the Commission in Case No.36/2005 and made a further prayer of monetary claim. The Hon'ble High Court by order dtd. 7.4. 2010 disposed of the said writ application refusing to interfere and directed M/s. Rawmet Ferrous Industries to put forth its grievance before the Commission. The operative portion of the order dated 7.4.2010 of the Hon'ble High Court is quoted below :

*“ In view of the aforesaid discussion, this writ petition is disposed of at the Stage of admission without expressing any opinion on the merits of the claim of the petitioners. The petitioners are at liberty to approach the O.E.R.C. for redressal of their grievance . It is further observed that the review application, which has been filed by the Opposite Party No.5, is pending for disposal .The petitioners, if so advised, may appear in the said case and present their case for consideration. With such observation, this writ petition is disposed of directing the OERC to dispose of the review application filed by the opposite party No.5 as expeditiously as possible, preferably within a period of two months from receiving copy of this order.”*

15. Thereafter M/s. Rawmet filed a claim petition before this Commission for recovery of money inter alia other reliefs and also opposing the Review petition filed by OPTCL to which OPTCL filed its objection on 12.10.10 by raising a preliminary point that though M/s. Rawmet has a right to make submission to the Review Petition , yet it has no right to bring a fresh claim like money claim against OPTCL in the present Review petition and such claim of M/s. Rawmet is also outside the jurisdiction of the Hon'ble Commission.
16. The Commission by order dtd. 9.11.10 overruled the objection raised by M/s. Rawmet with regard to maintainability of the Review petition . It has held that the Review petition should be heard in merit. Relevant paragraphs 8 & 9 of the order dtd. 9.11.10 are quoted below :



- “8. *But the cause of review can only be known when OPTCL is heard in length. It is premature to hold that this is an appeal in the guise of a review. Therefore the commission holds that the review petition can be disposed of only after hearing the parties concerned in the proceeding.*
9. *After hearing the parties, perusal of the case records the Commission allowed M/s. Rawmet Ferrous Industries Ltd., as a respondent to this proceeding and rejected its prayer that the review petition of M/s. OPTCL should be dismissed in limine at this stage on the ground that there is no discovery of new important matter of evidence or there is no mistake or error apparent on the face of the record. The merit of the review petition can be adjudged only after hearing the concerned parties to the proceeding M/s. OPTCL is allowed to file its detail reply in merit, if any prior to the next date of hearing serving copy to the respondents.”*

**Application filed by M/s Project Development Consultant Limited.**

17. M/s Project Development Consultant Limited filed an application impleading M/S OPTCL as the Respondent before the Commission and the same on 22.3.2007 has been registered as Case No. 3 of 2007 wherein the determination and payment of supervision charge is the subject matter of dispute. M/S PDC has prayed that, OPTCL to accept 6% Departmental charges for supervision of works for construction of lines/ sub-stations required for evacuation of power from small hydropower projects upto the inter connection point at 132kv or 33kv in stead of 16% supervision charges. By an interim order dated 19.07.2007 the Commission have directed that, this case will be heard along with the Case No. 63/2006 relating to the determination of supervision charges payable to the utilities , being analogous in nature.

**Submission made by the petitioner and the objectors :-**

18. On 18.1. 2011 both the Case No. 63 of 2006 and 3 of 2007 have been taken for final analogous hearing as the main issues and nature of dispute involved in both the cases are same.
19. Sri N.C. Panigrahi, learned Sr. Advocate arguing on behalf of OPTCL submitted that M/s. Rawmet was not a party in the original Case No. 36 of 2005. M/s. Rawmet has only a right to file its reply to the present review petition of OPTCL and M/s. Rawmet can not bring out any other fresh claim to be decided in this review petition filed by OPTCL and the money claim made by M/s. Rawmet is outside the jurisdiction of

OERC. Further, the Commission in its order dt.09.11.2010 has rejected the objection of M/s. Rawmet relating to maintainability of the Review Petition. Mr. Panigrahi learned Sr. Advocate submitted that the Commission in its order dt.09.11.2010 has overruled the objection raised by M/s. Rawmet, and directed that the review petition should be heard on merit. Hence at this stage the Commission is to consider the merit of the review petition.

20. Mr. Panigrahi, learned Sr. Advocate on behalf of M/S OPTCL further submitted that, the Hon'ble Commission by order dated 5.9.2007 has already rejected the objection raised by M/s. Hind Metal and Industries (P) Ltd. with respect to the to maintainability of review Petition and has directed that the review application can be heard on merit. This order of Commission having been challenged by M/s. Hind Metals & Industries (P) Ltd. in a writ petition filed in Hon'ble Orissa High Court and finally being dismissed by the Hon'ble Orissa High Court , the order dated 5.9.2007 of the Hon'ble Commission stands and now the Hon'ble Commission is to hear the Review Petition on merit . The Learned Senior Advocate submitted that, review application can not be said to be confined only to clerical mistake or error apparent on the face of record. The scope of review is wide enough even to include any other sufficient reason. He has relied upon the Judgment of Hon'ble Supreme Court of India reported in AIR 2005 SC page 592 and AIR 2005 SC page 2087.
21. Coming to the merit of the case Sri Panigrahi, Learned Senior Advocate submitted that, in view of the reason already narrated in the review petition , the Commission may
- (i) allow supervision charge @ 16% over the total project outlay in lieu of 6% allowed.
  - (ii) exempt OPTCL from the duties /responsibility for power supply to EHT consumers which falls under the domain of DISCOMs as OPTCL is duty bound under the statute for smooth flow of electricity from generating centre to the load centers.
  - (iii) permit OPTCL to collect Rs.10 lakh/MW as infrastructure loan as is being collected to ensure commitment and realistic assessment of power projection and provision of required transmission infrastructure. Infrastructure loan of Rs.10 lakhs per MW was fixed long since and since in the mean time there has

been substantial price rise the existing- rate of infrastructure loan of Rs. 10lakh per MW rather needs to be increased.

22. Sri Panigrahi, learned Senior Advocate submitted that the principle of remunerative norm applicable to DISCOMs as stipulated in OERC Distribution (Conditions of Supply) Code, 2004 may not be applicable to the STU, as supervision of EHT lines and other associated elements requires more professional expertise in comparison to LT, HT. Supervision activities of STU unlike distribution licensee consists of elaborate survey and documentation, including inspection of the associated materials such as transformers, AB switch, conductors, HG fuses etc. by deputing officials outside the state. The volume of work and man hour utilized by OPTCL in this regard needs to be compensated by the perspective consumer. He further submitted that, states like Rajasthan, Punjab, Gujarat are taking supervision charges as 15%, 16% and 15% respectively. PGCIL, the Central Transmission Utility is also charging 16% as supervision charge on the deposit works. Such supervision charges ranging from 15% to 22% is being charged by other State Govt., PSU's like IDCO, Orissa State Police Housing Corporation, Orissa Bridge and Construction Corporation, Orissa Construction Corporation etc while taking construction work entrusted by State Govt. or Autonomous Bodies. State PWD Department and RD Departments are also charging 16% towards supervision charges on work entrusted by autonomous organizations as deposit work.
23. Sri Panigrahi, learned Senior Advocate further submitted that, as per the Section 43 of the Electricity Act, 2003, it shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises on receipt of application from the owner /occupier of the premises. Hence, obligation to supply power on request vests with the concerned DISCOM for any voltage level under the Electricity Act, 2003. OPTCL is only duty bound to provide required transmission facility from generating station to the load centers i.e. EHT sub-station. Thereafter DISCOMs may give supply of electricity to the owner or occupier at his premises. Further, OPTCL does not have any direct commercial linkage with any EHT consumer (existing and perspective) for power supply or sharing mechanism of cost for the purpose of extension of dedicated EHT line. Further, as per Section 39(2) (c) of the

Electricity Act, 2003 OPTCL has only obligation to ensure development of an efficient, co-ordinated and economical system of inter-state transmission line for smooth flow of electricity from generating station to the load centers. Load center have not been defined either in Act, Regulation and orders of the Commission. Therefore, OPTCL has no obligation to supply power to the premises of the EHT consumer treating the same as an exclusive feeder or load centre.

24. Sri R.P. Mohapatra, appearing on behalf of M/s. Hind Metals and Industries Ltd. submitted that the contentions of the petitioner are not tenable at all. It is the responsibility of the Transmission Licensee and STU to ensure optimal development of the transmission network, as stipulated in the National Tariff Policy. The National Electricity Policy provides that the up gradation of the Transmission System should precede the load growth. The Infrastructure Loan is being availed by OPTCL even in cases where no up gradation is involved. In case of M/S Hind Metals & Industries Pvt. Limited who avails power supply from the Meramundali 400/220/132KV sub-station, no up gradation of any system was required. The EHT Consumers are not Financial Institutions to provide funds to the OPTCL. The Infrastructure Loan is not to be treated as a "Security Deposit". Only after the EHT consumer finalizes his Contract Demand, the Infrastructure Loan is being paid by the consumer to OPTCL. The Infrastructure Loan in practice, has now become a mandatory demand by OPTCL, in the guise of "Voluntary Contribution". The terms and conditions incorporated in the Infrastructure Loan Agreement do not conform to normal commercial practices and violate natural justice. So the "Infrastructure Loan" @Rs.10 lakhs/MW should not be collected by the OPTCL under any circumstances.
25. As regards to the "load centre", Sri Mahapatra subitted that as explained and submitted by OPTCL it is not correct. Sri Mohapatra submitted that "load centre", even though has not been specifically defined, by implication , it is not the sub-station of the transmission system . Section 2(16) of the Act, 2003 if be read closely, it clearly establishes that the **load centre** is not the **substation**. Further the Electricity (Removal of Difficulty)(Fifth) Order, 2005 in paragraph 2 has provided that "a generating company or a person setting up a captive generating plant shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated

transmission line etc.” It is the responsibility of the Transmission Licensee to extend the EHT line to the premises of an EHT consumer, which is the load centre considering the remunerative calculations at present in force.

26. Sri Mahapatra submitted that expectation of revenue without any investment by OPTCL need not be allowed by Commission. OPTCL while claiming supervision charges, should provide the break-up of details of supervisions required for transmission project and the expenditures incurred for such purpose instead of merely citing the fees being charged by other State Utilities.
27. Objecting to the contention of the OPTCL that it is entitled to get 16% of the total Capital Expenditure towards supervision of work and not 6% , Sri R.P.Mohapatra submitted that, the total annual expenditure of the Transmission Licensee relating to establishment cost, administration & general expenses and misc. expenses are allowed in the approved ARR for determination of Transmission Charges. Therefore no additional expenditure is incurred by the Licensee in supervising the works being executed by an EHT consumer on behalf of the Licensee. Further the major works like (a) preparation of specifications; (b) tendering, (c) bid evaluation and order placement, (d) approval of drawing, (e) execution of works are directly handled by the EHT consumer. The Transmission Licensee has only to approve the above as well as supervise the works from safety and security point of view and does not mean deployment of personnel for round the clock supervision of works. The Supervision Charges of 6% of the total estimated Capital Expenditure should therefore be considered as adequate and not to be enhanced/modified.
28. Sri R.P.Mohapatra, further submitted that, there is no error apparent in the order dt.22.07.2006 of the Hon’ble Commission in Para 26 & 27 passed in case No.36 of 2005. So the petition for review is to be rejected.
29. The learned counsel appearing on behalf of M/s Rawmet Ferrous Industries Limited submitted that the power of review may not be exercised on the ground that the decision was erroneous on merits. The power of review is not to be confused with the appellate power which may enable the Appellate Court to correct all manner of errors committed by the subordinate courts. Under order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the

record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under order 47 Rule 1 CPC. In exercise of the jurisdiction under order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, has a limited purpose and cannot be allowed to be an appeal in disguise”. Therefore, the order which has been sought for to be reviewed by OPTCL having no error apparent on the face of record should be disallowed and rejected. The learned counsel in order to establish his contention has relied upon the judgement of the Hon’ble Supreme Court of India reported in (1995) 1 SCC 170 Meera Bhanja (Smt) Versus Nirmala Kumari Choudhury( Smt) and (1997) 8 SCC, 715 (Parsion Devi and others Vrs Sumitri Devi and others) .

30. Learned counsel appearing on behalf of M/S Rawmet Ferrous Industries Limited further submitted that since the reason given by OPTCL for review of the supervision charges has no basis the supervision charges of 6% as determined by the Commission need not be reviewed. The reason given by OPTCL for review of the supervision charges has no basis at all. It is the responsibility of the transmission licensee to extend the EHT line to the premises of an EHT consumer, which is the load centre. So the entire transmission line is to be constructed by the OPTCL being the transmission licensee from the generating stations to Load center taking in to consideration the remunerative calculation . It further submitted that, there is no provision either in the Electricity Act, 2003 or in the Regulation made there under to collect such infrastructure loan of Rs.10 lakhs per MW from EHT consumers. So the collection of the infrastructure loan is against sanction of law. He submitted that, in the case of M/s Rawmet ferrous Industries Ltd., the OPTCL has forcibly collected a sum of Rs. 1.50 cores towards infrastructure loan. On 02.07.05 OPTCL wrote a letter to M/s Rawmet Ferrous Industries Ltd., for supply of power to its units subject to the execution of a bi-partite agreement between M/s Rawmet Ferrous Industries Ltd. and OPTCL by depositing a sum of Rs.10 lakhs per MW as an interest bearing loan to OPTCL. He submitted that, in true sense, voluntary contribution of infrastructure loan by consumers as mentioned in the agreement is not correct. Having no other alternative, perspective consumers are being forced to deposit the same to avail power.

31. Mr. K. C. Mohapatra, making his submission on behalf of PDC has opposed the 16% supervision charges claim made by OPTCL and raised objection about the supervisory competency of STU officers. He pointed out that as the officer of STU are not having the supervisory competency certificates as per I.E.Rules, 1956, they are not competent to supervise and hence the collection of supervision charges by OPTCL should be stopped.

**Issues to be determined :-**

32. After going through the submission of the petitioner and the various respondents as outlined above, the commission now frames the following issues to be decided:-
- (i) Whether the present review petition is maintainable?
  - (ii) Whether the obligation to supply on request, of any prospective EHT consumers (132 KV and above) vests with the concerned Distribution Licensee or with the Transmission Licensee (OPTCL-STU)?
  - (iii) What is “Load Centre” and what is the interface point of the Transmission Utility with the DISCOM and the DISCOM with the EHT consumer for billing purposes?
  - (iv) Who has the obligation of construction, maintenance and operation of EHT lines from the OPTCL grid S/S to the consumer’s premises; is it M/s OPTCL or the DISCOM or the consumer itself? Further, who is the owner of the 132 KV and above line/system?
  - (v) Whether the observation of the Commission holding that the determination of remunerative norms for creation of Distribution Network Mutatis Mutandis be applied for creation of Transmission Network?
  - (vi) Whether the claim of 16% supervision charge as claimed by OPTCL in Review petition is justified?
  - (vii) Whether the current practice of “Infrastructure Loan” being asked by OPTCL directly from EHT consumers on the agreement at the time of connectivity approval is justified?
  - (viii) Whether the prayer of M/s Rawmet Ferrous Industries Limited for refund/adjustment of the amount that he has paid as” Infrastructure Loan” to OPTCL falls within the competency and jurisdiction of the Commission to decide being purely a money matter between two parties?

**Issue-i:        Whether the present review is maintainable?**

33.     Section 94 of the Electricity Act 2003 (hereinafter the ‘Act’) provides the requisite powers for the review of its decisions, directions and orders to the Appropriate Commission. Section 94(1) of the Act provides that the appropriate commission shall , for the purpose of any enquiry or proceedings under this Act have the same power as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

- (a)     summoning and enforcing the attendance of any person and examining him on oath;
- (b)     discovery and production of any document or other material object producible as evidence;
- (c)     receiving evidence on affidavits;
- (d)     requisitioning of any public record;
- (e)     issuing commission for the examination of witnesses;
- (f)     reviewing its decisions, directions and orders;
- (g)     any other matter which may be prescribed.

34.     Thus the power of review by the Commission emanates from Section 94 (1)(f) of the Act read with Clause -70 of OERC (Conduct of Business ) Regulation, 2004 and Section 114 and Order 47 Rule 1 of Code of Civil Procedure, 1908. Order.47,Rule 1 of CPC is quoted below:-

**“1. Application for Review of Judgment (1) Any person considering himself aggrieved:**

- a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.*
- b) by a decree or order from which no appeal is allowed, or*
- c) by a decision on a reference from a court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the*



*decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.”*

35. In order to determine the scope and power of review, the Commission has gone through the different reported judgments of the Hon’ble Supreme Court of India cited during course of argument by the learned counsel appearing for M/S OPTCL and M/s Rawmet Ferrous Industries Limited.

36. Interpreting Order 47, Rule 1 of CPC , in the case reported in AIR 2005 SC 592 their Lordship of Hon’ble Supreme Court in the case of Board of Control for Cricket, India vrs. Netaji Cricket Club in paragraphs 88,89 and 90 have held as under:

*“88. We are furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in S.114 of the Code in terms whereof it is empowered to make such order as it thinks fit.*

*89. Order 47, Rule 1 of the code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake **or for any other sufficient reasons.***

*90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reason’ in O.47,R.1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine “actus curiae neminem gravabit”.*

In paragraph-92 of the aforesaid Judgment relying on a earlier judgment of the Supreme Court reported in AIR 2000 SC -1650 it held .

*“Law has to bend before justice. If the court finds that the error pointed out in the review petition was under a mistake and the earlier Judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing it preclude the court from rectifying the error.”*

The Apex Court in another decision i.e. Indian Charge Chrome Ltd Vrs. Union of India reported in AIR 2005 SC 2087 in Paragraph 16 held as under:

*“16. it is true, as contended by learned counsel opposing the admission of the review petitions that review petitions should not be lightly entertained and mere fact that there were two views ,one in terms of the majority and the other dissenting ,cannot be the basis for recalling the majority judgment and rehearing the matter, but that is not the ground for the conclusion we have reached, as aforesaid for admitting the review petitions. We have found errors apparent on record, as noticed above, namely:*

- 1. Non –consideration of the contention regarding illegality of the communication dated 30<sup>th</sup> June 2001; and*
- 2. Absence of opportunity to explain the order dtd. 14<sup>th</sup> January 1999.”*

37. Therefore from the above pronouncement of the Hon’ble Apex Court, it is now clear that, the power of review is not restricted only if there is any clerical mistake or error apparent on the face the record. The power of review also can be exercised by the court if it satisfied that **there are other sufficient reasons** (emphasis given by us).
38. It is now to be ascertained whether there are other sufficient reasons which requires that order passed in Case No. 36 of 2005 as has been prayed for by OPTCL needs review.
39. It has been pleaded in the review petition that OPTCL does not have any direct commercial linkage with any EHT Consumer (existing and prospective). It does not supply power nor has it any mechanism to share the cost of extension of dedicated EHT lines. The obligation to supply on request rests with the concerned distribution licensee for any voltage level under Section 43 of the Act and such a function shall not be thrust

upon the transmission Licensee. OPTCL has further contended that the aforesaid provisions do not provide either for framing /service of the estimate to the prospective consumers by OPTCL and have no commercial agreement for sharing of cost by OPTCL with consumers. Further OPTCL does not have any back up arrangement for recovery in case of advance exit/reduction of demand. It has been further pleaded and contended that OPTCL has only obligation to ensure development of an efficient, coordinated and economical system of intrastate transmission lines for smooth flow of Electricity from a Generating Station to the Load centers as per Section 39(2) (c) of the Act. OPTCL has therefore, no obligation to supply power to the premises of the EHT Consumer treating the same as an exclusive feeder.

It has been further stated that the supervision activities of the STU, unlike Distribution Licensee, consist of elaborate Survey and documentation required for EHT lines which are not required in HT and LT Liens. The volume of works like checking of drawing etc. and consequent man hour and Technical expertise involved are many times more than that of HT & LT lines. When critical equipments like transformer, A B switch, conductor, HG fuses, PSC Poles, Joists etc. are available in the state, almost all materials for EHT lines and bays are procured from outside the State and OPTCL incurs additional expenditure for deputing inspecting Officers to outside state for inspection of material. It has been further stated in Para-5 of the review petition that the Board of Directors of Gridco had fixed 17% as supervision charges and such 16% is one of the lowest as compared to such charges being levied by other States as well as central sector Utilities. To justify this stand in its supplementary submission filed on 30.7.07 OPTCL has stated that other States including PGCIL have been charging 14% to 16% as supervision charges. State PWD Department is also charging supervision charges in the name of pro-rata charges at the rate of 16% for work under plan, 20% under non-plan (maintenance work) and 17% on deposits works. The State PSUs like Orissa Police Housing and Welfare Corporation, IDCO, Orissa Construction Corporation etc are charging 15 % on work executed on behalf of State Govt. Departments and other organizations as deposit work. Hence the prayer of OPTCL to allow 16% supervision charges is not unjustified and the Commission's order to charge supervision charges at 6% is required to be reviewed.

40. OPTCL further submitted that, by imposing the infrastructure loan condition, it is not only able to make the industries remain committed to the actual availment of power required for a reasonable period over a fixed time frame, but also ensures the viability of the power supply scheme. This also discourages industries, who are not actually keen about setting up industry and/or to avail power, other than wanting to reserve power, bay space etc. for their security. Further by imposing this condition, the industries are encouraged to meet the maximum of their power requirement by setting up their own CGP and by that the power demand is reduced and the industries are also able to wheel their surplus power of CGP through OPTC network. This increases the generation capacity of the State, which will encourage other industrial houses to set up industries in the State and will add value to the socio-economic condition of the State. OPTCL has submitted that it is justified to ask for infrastructure loan at the rate of Rs.10 lakhs per MW which was fixed long since even though in the meantime the inflation has gone up considerably. This is also in line with the provision of mobilization advance as per Rule 3.7.21 of OPWD Code of Govt. of Orissa and provision of para 4.10.2 of Manual for Procurement of Works issued by the Ministry of Finance of India which is extracted below:

*“Para 4.10.2. **Mobilization Advance:** In respect of certain specialized and capital intensive works, mobilization advance normally limited to a maximum of 10% of estimated cost of work may be allowed to contractor at the specified rate of interest. The advance shall be against the Bank Guarantee of a scheduled Bank for full amount of advance. Recovery of such advances shall be made by deduction from contractor’s bills as specified in the contract”.*

41. In consideration of the aforementioned submission made by OPTCL the commissions holds that, there are sufficient reason for review of the order as has been prayed for by OPTCL because the power of review is not circumscribed or to be made only if there is a clerical mistake or error apparent on the face of the record. It can be exercised, if there are other sufficient reasons. In the instant case, there was need to bring out clarity and distinction with regard to supervision charges, infrastructure loan, remunerative cost analysis, load centre, role of DISCOMs, Transmission utility vis-à-vis the user of EHT lines. Hence, it called for a detailed review in order to remove the doubts and bring out clarity of role of DISCOMs, Transmission utility and the EHT user etc.

**Issue-ii: Whether the obligation to supply on request, of any prospective EHT consumers (132 KV and above) vests with concerned Distribution Licensee or with the Transmission Licensees (OPTCL-STU)?**

M/s OPTCL has argued that the obligation to supply on request of any prospective EHT consumers vest with concerned Distribution licensee under Section-43 of the Electricity Act, 2003. The extension of supply line upto the consumer point including EHT line, is also permitted to DISCOM under Section 45 & 46 of the said Act. The responsibility of any Transmission Licensee (STU) remains for planning, construction, maintenance and operation of EHT system (lines and substation), in such a way that the power sourced from the Generators and others are supplied to DISCOMs made in most economical way with least system loss. For the purpose, 'STU' files ARR at the Commission for approval of its transmission charge. Transmission Licensee has no obligation to supply power to any consumer. DISCOMs also agree that any consumer including EHT consumers in its Licensee area are the consumers of DISCOMs and, therefore, shall have the commercial dealings only with DISCOMs. DISCOMs, however, plead that as they do not have expertise of construction, maintenance or operation of 132 KV or above lines, the dedicated feeders of EHT consumers need to be maintained and operated by OPTCL.

The apparent misunderstandings between EHT consumers, DISCOMs and OPTCL, not only in the case of initial power supply or more importantly during the day to day operation is continuing as a legacy from pre-reform – OSEB era when Generation, Transmission and Distribution was one entity. The Commission has noted in many instances, load restriction and even hand tripping of EHT consumers is directly resorted to by OPTCL without even the prior knowledge of the DISCOMs, causing serious billing dispute between the EHT consumer and the DISCOM. The Commission has also noted that for initial power supply to EHT consumers or revision of contract demand of existing EHT consumers, DISCOMs do not take any responsibility and conveniently advise the consumers to take up with OPTCL/GRIDCO. This practice need to be stopped both in letter and spirit.

We categorically state that all consumers including EHT consumers, in a particular licensee's area, are the consumers of the DISCOMs only. Any obligation to

supply of power to any prospective EHT consumers and any commercial dealings and/or contract demand revision lies with DISCOM only. DISCOMs, on their part would take up with Transmission utility (M/s OPTCL) for construction of any new EHT lines or system, as required. Similarly, for the existing EHT consumers, any maintenance or operational procedure for the dedicated EHT line/system, DISCOM would interact with OPTCL as per the provision of Grid Code. No load regulation or hand tripping shall be done by OPTCL to the EHT consumers without prior approval of DISCOM, unless in case of grid emergency as specifically instructed by SLDC. In such a case the matter may be immediately informed by OPTCL to the concerned DISCOM for interaction with the EHT consumers.

Therefore, the obligation to supply power on request of any prospective EHT consumer lies with the DISCOM, and DISCOMs need to take up the necessary interaction with the Transmission licensee on behalf of the consumer.

**Issue-iii : What is “Load Centre” and what is the interface point of the Transmission Utility with DISCOM and the DISCOM with the EHT consumer for billing purposes?**

41. Sri Panigrahi, Learned Senior Advocate has stated that OPTCL is duty bound to provide the required transmission facility from generating station to the load centers i.e. EHT sub-station. As per Section 39(2) (c) of the Electricity Act, 2003 OPTCL has only obligation to ensure development of an efficient, coordinated and economical system of inter-state transmission line for smooth flow of electricity from generating station to the load centers. Load center have not been defined either in Act, Regulation and orders of the Commission. Therefore, OPTCL has obligation only to provide required transmission facility from generating station to the load centers i.e. EHT sub-station and/or any switching station required to establish for providing connectivity with the EHT consumer. The premises of the EHT consumer cannot be treated as load centre.

Sri R.P Mohapatra submitted that “load centre”, even though has not been specifically defined but by implication , it is not the sub-station of the transmission system . Section 2(16) of the Act, 2003 if be read closely, can be inferred that the **load**

**centre** is not the **substation**. It is the responsibility of the Transmission Licensee to extend the EHT line to the premises of an EHT consumer, which is the load centre.

Learned counsel appearing on behalf of M/S Rawmet Ferrous Industries Limited submitted that licensee to extend the EHT line to the premises of an EHT consumer, which is the load centre.

42. Section 2(16) of the Act defines ‘dedicated transmission line’ required for the purpose of connectivity of Captive Generating Plant or Generating Station with the Transmission utility, i.e. basically for sourcing power from generators by the Transmission utility. The word ‘dedicated feeder’ basically for supplying power from the Transmission utility to any consumer is not defined although ‘distribution system’ is defined as system of wires and associated facilities between the delivery points of the Transmission lines or the Generating stations to the installation of the consumers. In the Act, the word “Load Centre” is not defined. In an integrated power system the load centres for the Transmission licensee and the Distribution licensee differs. In common parlance the load centre of a “Transmission Licensee” is the point where bulk of the load is available to be drawn by the DISCOM for further distribution to its retail consumers. In the context of EHT consumers, fed through a dedicated feeder solely for its own consumption, the question arises what is the drawl point of DISCOM from the Transmission Utility and what is the re-sale or interface point of DISCOM to the sole “EHT Consumer”? The objectors (consumers) argued that its drawl point is its own installation and the DISCOMs should bill them accordingly. The petitioner (M/s OPTCL) argues that the drawl point of DISCOM is its own grid S/S and, in fact, GRIDCO is continuing the practice of billing to DISCOM as per the meter installed in the OPTCL grid S/S. As the DISCOM cannot and rather should not bear the EHT transmission losses themselves, in most of the cases prefer bill to EHT consumer as per the meter reading at OPTCL grid S/S for the EHT consumer fed through dedicated feeder.

We find sufficient logic of continuing the present practice of billing arrangement, as the transmission losses caused in the ‘dedicated feeder’ is borne by the sole EHT consumer itself and are not pooled by the transmission utility. However, we hold that as per the present Distribution Code of the Commission, the responsibility of

DISCOMs are limited to only 33 KV, therefore all 132 KV and above lines and systems (including any dedicated EHT feeder) are part of the transmission system. We do not have any objection if gradually the practice of metering arrangement at the installation of the EHT consumer premises is made at the cost of the consumer for the billing purpose both by DISCOM's drawl from GRIDCO as well as consumer's drawl from DISCOM. M/s OPTCL can pool the transmission losses of the dedicated EHT feeder.

**Issue (iv) : Who has the obligation of construction, maintenance and operation of EHT lines from the OPTCL grid S/S to the consumer's premises, is it M/s OPTCL or the DISCOM or the consumer itself? Further, who is the owner of the 132 KV and above line/system?**

On hearing the submission of all stakeholders, we state as under:

43. DISCOM, on receipt of request of the prospective EHT consumers would take up its own due diligence and shall interact with OPTCL for either extending only a dedicated EHT feeder purely for the use of the sole consumer or establishment of a new grid S/S (including switching station) catering to more than one consumer including the prospective consumer as a part of its Distribution Planning. The responsibility of construction, maintenance and operation of EHT lines should remain only with Transmission licensee itself and should form as a part of the asset of the Transmission utility only.
44. The Commission has come across instances that wherever the issue of construction of dedicated EHT feeders arises, DISCOMs do take a passive role and ask the prospective consumers to take up with Transmission licensee for construction and subsequent maintenance and operation of the line. A wrong perception, therefore, pervades that the EHT consumers fed through the dedicated feeder are the consumer of the Transmission licensee itself. This practice should be stopped. It is the DISCOM who, for their business interest, should take active part either for construction of dedicated lines and switching station by OPTCL on payment of cost by the user or if OPTCL desires advise the User to construct the line, under technical supervision of the OPTCL as per the relevant standard on behalf of the transmission licensee. The ownership of the EHT system and further operation and maintenance should lie only with the transmission licensee. We agree with the contention of M/s OPTCL, that after completion and



successful charging of the line, the ownership of the EHT system should be transferred to M/s OPTCL on payment of the cost of the system. The user should be freed from further maintenance expense and responsibility.

**Issue (v): Whether the observation of the Commission holding that the determination of remunerative norms for creation of Distribution Network Mutatis Mutandis be applied for creation of Transmission Network?**

45. In the Order dt.22.07.2006 in Case No.36/2005, the Commission had ordered at Para 27 that the determination of remunerative norms for distribution network can mutatis mutandis be applied for creation of transmission network. The above observation of the Commission has been derived from various definitions/provisions in the statutory documents as pointed out below:

Section 2 (36) read with 2(37) of the Electricity Act, 2003 says that intra-state transmission system is a system for transmission of electricity in the state on a system built, owned, operated, maintained or **controlled** by a STU. Section 39 (2)(c) of the Act says that, STU should ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the **load centers**. Section 40(a) of the Act says that the transmission licensee should build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be.

Regulation 2.3(1)(c) of Orissa Grid Code(OGC) says that the STU should ensure development of an efficient, co-ordinated and economical system of the State transmission lines for smooth flow of electricity from a generating station to the **load centres**. Regulation 2.4(a) of OGC says that the transmission licensee should build, maintain and operate an efficient, co-ordinated and economical Transmission System. Regulation 2.5(1)(a) of OGC says that the distribution licensee should develop and maintain an efficient, co-ordinated and economical Distribution System in his Area of Supply;

Connection and use of Transmission System of the transmission licensee by EHT consumers should be as per the connection agreement provided in the annexure-1

to Chapter-4 of OGC which says that the transmission licensee should facilitate connection of an EHT user's system with its own system. In that connection agreement, the transmission licensee has got the right to control the user's EHT system at its premises.

Regulation 11 (3) of OERC Distribution (Conditions of Supply) Code, 2004 says that the distribution licensee should forward the application for supply at EHT to the transmission licensee for processing in terms of provisions in the OGC. The distribution licensee is required to obtain the question of feasibility from the transmission licensee.

Clause 3.2(b) and 3.6 of Schedule-1 to OERC (Licensee's Standards of Performance) Regulation, 2004 says that the transmission licensee has got the exclusive right to communicate feasibility of an EHT consumer's supply installation. The distribution licensee is required to have necessary commercial arrangement with the respective transmission licensee to ensure that the required EHT supply is made available within the time frame in consultation with the transmission licensee.

Condition 6.1 of the Transmission License says **that the transmission licensee should comply with the Distribution Code which includes [OERC Distribution (Conditions of Supply) Code, 2004 ] to the extent it is applicable to it.**

Clause 5.5.1 of National Electricity Policy says that there should be recovery of cost of service from consumers to make the power sector sustainable.

Section 86(1) (c) of the Electricity Act, 2003 says that the Commission should facilitate Intra-state transmission and wheeling of electricity.

Section 86(1)(k) of the Act says that the Commission should discharge such other functions as may be assigned to it under the Act.

In the light of the above, since distribution licensees have got no expertise in laying, operating and controlling the transmission system, to facilitate EHT consumers to avail power and to become a consumer of the distribution licensee, either the EHT

consumers can build the line on their own under the expert supervision of the transmission licensee or they can pay the entire cost of building the transmission system by the Transmission licensee. In either of the cases, remunerative calculation is a must. Transmission licensee can not escape to do the job in view of its sole and exclusive expertise and obligation in doing so. In that case, the remunerativeness provided in the OERC Distribution (Conditions of Supply) Code, 2004 should be equally applicable to the transmission licensee. Hence, the Commission has rightly ordered that the remunerative norms of the distribution network should be applied mutatis mutandis for creation of transmission network and there is no additional or new ground justifying any review of the order of the Commission relating to this part of the order.

**Issue (vi) : Whether the claim of 16% supervision charge as claimed by OPTCL in Review petition is justified?**

**Issue (vii) : Whether the current practice of “Infrastructure Loan” being asked by OPTCL directly from EHT consumers on the agreement at the time of connectivity approval is justified?**

46. Both the above issues (vi) & (vii) are taken together. The contention of OPTCL are to the following effects:-

- (i) Other states like Rajasthan, Punjab, Andhra Pradesh, Maharashtra are charging supervision charges ranging from 15% to 16% on the estimated capital work Commission's direction to charge 6% on such capital work should be reviewed and the petitioner should be allowed to continue to claim 16% supervision charges. OPTCL further supports its contentions by the supervision charges ranging from 15% to 22% being charged by State Govt. as well State PSUs like Orissa Police Housing Welfare Corporation, IDCO, Orissa Construction Corporation, Orissa Bridge Construction Corporation etc.
- (ii) In para 29 of the order dtd. 22.07.2006 passed in sou-motu Case No. 36/2005 the Commission has observed that there is no justification for collection of Rs.10 lakh per MW from the prospective consumers for construction of lines and substations upto the load centre to be developed by OPTCL following prudent financial practices. However, the Commission shall have no objection if

the prospective consumers come forward voluntarily for giving the loan to the transmission company at the prevailing bank rate.

47. The petitioner has submitted that this observation of the Commission should be modified and OPTCL should be allowed to continue collection of Rs.10 lakh per MW as infrastructure loan from the prospective consumers. In this connection the petitioner during the course of hearing has submitted that when OPTCL avails loan for construction of lines and substations, the repayment of principal and interest thereon is taken into account by the Commission while fixing the transmission tariff. OPTCL is also paying interest on infrastructure loan Rs.10 lakh per MW collected from the prospective consumers and this interest is also taken into account while fixing transmission tariff. Since this infrastructure loan is being taken at a reasonable cheaper rate the benefit ultimately goes to the consumer. Therefore, the observation of the Commission should be modified. Further, the infrastructure loan of Rs.10 lakh per MW from the prospective consumers is being collected long since 2004 and in the meantime there is substantially rise in the prices and if viewed from this angle infrastructure loan of Rs.10 lakh per MW is rather low. The infrastructure loan at the rate of Rs.10 lakh per MW was fixed long since and in view of substantial price rise during these years and existing provision of mobilization advance under Rule 3.7.21 of OPWD Code and Para 4.10.2 of Manual Procurement of Works, Ministry of Finance, there is sufficient reason for the Commission to review its own order and allow OPTCL to charge the infrastructure loan at least at the existing rate of Rs.10 lakh per MW.
48. OPTCL is required to construct the transmission lines up to the load centre but in the absence of clear cut definition in the Electricity Act, 2003 or clear cut clarification by the Commission, OPTCL would construct the transmission lines up to the grid substations or to the distribution substations which should be treated as the load centre and not to the premises of the EHT consumers.
49. Coming to the supervision charges we find that 6% of the estimated capital cost is being charged as supervision charges by the distribution companies as per the Appendix-I OERC Distribution (Conditions of Supply) Code, 2004. The contention of OPTCL is that the construction of distribution network does not require so much of close technical supervision and monitoring as in case of transmission network. Elaborate survey and documentation required for EHT lines & substations, which are

not required for HT or LT lines and substations. The volume of work like checking of drawing etc., and consequent man-hour and technical expertise involved are many times more than HT/LT line and substations construction. OPTCL is also incurring additional expenditures for deputing inspecting officers outside the state for inspection of materials. Therefore, the supervision charges payable in case of capital work related to distribution work should be extrapolated to the construction of transmission network/transmission lines. This is borne out from the fact that supervision charges in other states hovers around 15-20%.

50. We have noted that the submission of OPTCL which is borne out from the fact that the supervision charges levied in the estimate of departmental charges of CPWD works varies from 23% to 27% depending upon nature of work and estimated cost of work which may be seen from the table given below:

Table-1

Objective of Work	All Maintenance works and minor works costing upto Rs.one lakh	Construction works costing Rs. Two crore	Construction works and minor works costing between Rs. Two crore and five crore	Construction works costing more than Rs. Five crores
1	2	3	4	5
(A) Establishment Charges				
1. Preparation of preliminary sketches	1.1/2%	1/4%	1/4%	1/4%
2. Preparation of detailed working drawings	1%	3/4%	1/2%	1/4%
3. Preparation of preliminary estimates	1/4%	1/4%	1/4%	1/4%
4. Preparation of detailed estimates	1/2%	3/4%	1/2%	1/4%
5. Preparation of structural designs	1%	1%	3/4%	3/4%
6. Execution	19 1/4%	7 3/4%	4 3/4%	4 1/4%
Total	22 1/2%	10 3/4%	7%	6%
B. T & P (Machinery Equipment)	3/4%	3/4%	1/2%	1/2%
C. Audit and Account	1/4%	1/4%	1/4%	1/4%
D. Pensionery	1/4%	1/4%	1/4%	1/4%
	23 3/4%	12%	8%	7%

Further, in case of Engineering Department of State Govt. supervision charges in the shape of pro-rata charges are being inbuilt into the estimate by the Engineering department in the State Govt. under Orissa PWD Code ranging from 16% to 17% as per the table breakup given below:-

Table-2  
Pro-rata Charges

Items	Plan	Maintenance (Non-Plan)	Deposit
Establishment Charges (Salaries)	10.5%	10.5%	10.5%
Audit & Accountants Estt.			
Tools & Plant	4.5%	8.5%	4.5%
Pensionary Charges	1%	1%	1%
Total	16%	20%	17%

However, following the amendment made in the CPWD by Govt. of India State Govt. in the Finance Department Office Memorandum Notification No.WF-I(W)-15/2010/49660 dated 1<sup>st</sup> December, 2010 have decided to abolish proportionate charges from 1.4.2011 on all works for which funds have provided in the budget. However, in respect of Contribution and Deposit Work to be executed on behalf of other Government, Non-Government bodies and individuals etc. on turnkey basis, proportionate charges shall be levied @ 10% towards establishment charges by State Engineering departments. On the other hand, overhead charges/supervision charges in respect of State Govt. works allotted to the departmental/public sector undertakings (PSU) i.e. Orissa Bridge and Construction Corporation, Orissa State Police Housing & Welfare Corporation Ltd., Orissa Industrial Infrastructural Development Corporation, Orissa Construction Corporation and Orissa Tourism Development Corporation should be limited to 10% w.e.f. 01.04.2011 as notified by Finance Department vide their letter No.WF-11-22-2011/5522(5)/F dt.11.02.2011. This revised rate would be applicable to new works to be taken up on or after 1.4.2011 as indicated below:

Table -3

Components of work	Percentage rate of Establishment Charges
1. Preparation of Preliminary sketches	½%
2. Preparation of detailed working drawings	1%
3. Preparation of preliminary estimates	½%
4. Preparation of detailed estimates/scrutiny of estimates/scrutiny of bills/approval of plan	1%
5. Preparation of structural designs/technical sanction	1%
6. Execution	6%
Total	10%

51. In case of work done by engineering department and State Govt. ( Works, RD, Water Resources, H&UD etc) the supervision charges have been levied ranging from 16% (Plan) to 20% ( Non-Plan) and on deposit work the departmental and other charges is 17% upto 31.03.2011. The State PSUs like IDCO, Orissa State Police Housing & Welfare Corporation, Orissa Bridge and Construction Corporation were charging around 15% upto 31.03.2011.
52. We observe that the submission of OPTCL mixes up ‘departmental charges’ claimed by the Central PWD and State Govt. Deptt. for planning, designing and execution on behalf of the client organisation with that of ‘erection & supervision charge’. We feel that where the dedicated EHT line is constructed voluntarily by the User itself, as per the Standards and specification of OPTCL, at its own cost and the responsibility of OPTCL lies only for approval of drawings and erection supervision, then a charge of 6% supervision charge should be sufficient. In this place, the Commission stress the point that the 6% supervision charges will be applicable for the entire estimate including supply portion and not only on the part of the erection cost. As per the existing order, the 6% supervision charge also includes the cost of inspection fee payable to the Electrical Inspector before charging the line. We order that the User, constructing the line should, at its own cost, pay the inspection fees and obtain the permission of the Electrical Inspector for charging of the line. The inspection fee shall not be part of the 6% supervision charge to be paid to M/s OPTCL. The 6% supervision charge is meant for approval of design/construction drawing and to ensure that the material as erected and quality of erection are as per the prescribed standard. Wherever the user due to lack of competency on its own part entrusts the work of supply, erection and commissioning of the transmission lines and system to OPTCL itself, OPTCL takes the full responsibility of designing, preparation of tender specification and inspection of equipment of supplier’s work along with actual supply and erection, then OPTCL may charge 16% departmental charge over the estimated cost prepared as per the cost element approved by the Commission. The responsibility of getting approval of Electrical Inspector for charging the line on payment of requisite testing fee, shall be the responsibility of construction agency i.e. M/s OPTCL. In other words, 16%

supervision charges is inclusive of inspection fees. The total estimated cost of supply, erection, testing and commissioning including 16% departmental charge shall be approved by the Commission and paid by the User using the dedicated feeder. M/s OPTCL is duty bound to take up the responsibility of construction of the EHT line/system as per the request of User/DISCOM and provide power supply to DISCOM for ultimate use of the User within the due time limit. Since the PGCIL is charging about 22% for the work entrusted to it by OPTCL and other, the revised rate of 10% now being charged by State PSUs w.e.f. 01.04.2011 is not applicable in case of OPTCL as it involves more complicated work compared to civil construction work undertaken by State PSUs like IDCO, Orissa State Police Housing & Welfare Corporation, Orissa Construction Corporation etc.

The maintenance and operation of the EHT lines (including dedicated feeder) shall be the responsibility of OPTCL, as the same is included a part of its asset and for the purpose, Commission approves the O&M expenditure in its ARR.

We, therefore, hold that –

- (1) when the EHT lines/system is constructed by the User itself under the supervision of OPTCL, then 6% supervision charge of the total capital cost shall be payable to OPTCL. The testing fee of the Electrical Inspector shall be borne by the User. The word User here includes both EHT consumer as well as Generator/CGPs seeking connectivity with OPTCL.
- (2) when the dedicated lines/system is constructed by OPTCL as per the request of User, 16% departmental charge which also includes testing fee of the Electrical Inspector shall be made applicable. The total estimated cost including 16% departmental charge need to be approved by the Commission.

The above charges shall be made applicable in respect of the work for which agreement is to be signed on or after the date of this order and past cases shall not be reopened.

53. Regarding the continuance of Infrastructure loan of Rs.10 lakh/MW and the claim of suitable enhancement, OPTCL argues that even though the cost of dedicated EHT



feeder is fully borne by the sole user, it has to bear additional cost on account of upgradation of back-up network in order to supply quality power to the prospective consumers. OPTCL further argues that as per their past experience, normally the EHT consumer make a requisition of higher drawl than their requirement causing unnecessary bottled-up high network cost without any benefit. The infrastructure loan work as a check point for the prospective user to assess its requirement correctly.

We do not find any justification for such a claim. We have already stated that any user (including dedicated EHT consumer) are the consumers of the DISCOM and they should give their requisition only to DISCOM. DISCOM on its part, after due prudency check shall interact with the Transmission licensee for need of dedicated EHT lines for sole consumer or upgradation of S/S to cater to other consumers including the prospective EHT consumer. The need for upgradation and maintenance of a strong 220 KV and 400 KV backbone network is a normal planning exercise of Transmission utility with constant interaction with the Distribution utility.

54. Regarding the second argument that the prospective user holds the transmission capacity without any immediate use, we are of the opinion that it is the duty of DISCOM to have prudency check and enter into the agreement of contract demand for fixed charge payment with its consumer while interacting with the Transmission licensee for any likely upgradation of back-up network. We are not convinced with the submission of OPTCL that EHT consumer unnecessarily holds larger capacity without any immediate use, while the same time pays the higher fixed charge to DISCOM without actually availing the capacity. The condition of infrastructure loan as a check point for proper assessment of capacity is not correct, rather we tend to agree with the User's argument that the payment of infrastructure loan is a compulsion and never a voluntary Fixed Deposit scheme for them. It may be understood that any upgradation and/or new construction of EHT system is being made on the basis of request of DISCOM, by the Transmission licensee, although the User of the dedicated feeder pays for the initial cost, being the sole beneficiary. The User, in any case, is entitled for usual relief under remunerative cost analysis in due course of time.

55. The upgradation of backbone transmission network, with proper 'cost benefit' analysis in any case is approved by the Commission and, therefore, demanding for any infrastructure loan from any consumer's of DISCOM by the Transmission licensee should stop from the date of this order. However, the infrastructure loan already taken or agreed to be taken on or before the date of this order will be governed/regulated as per the agreement already entered into and there is no question of any immediate refund of such infrastructure loan already taken/given. User, however, is entitled for its due relief as per the remunerative cost calculation.

**Issue-viii : Whether the prayer of M/s Rawmet Ferrous Industries Limited for refund/adjustment of the amount that he has paid as" Infrastructure Loan" to OPTCL falls within the competency and jurisdiction of the Commission to decide being purely a money matter between two parties?**

56. As opined in para 53 to 55, we at this stage, are not in a position to offer our comments on the existing agreement of 'Infrastructure Loan' made between the EHT consumer with OPTCL including the agreement of M/s Rawmet Ferrous Industries as details and circumstances of the agreement and validity of the loan and/or condition of repayment is not known to us. We, however, opine that the practice of asking for an infrastructure loan as a part of connectivity agreement should stop from the date of this order. We further hold that there should not be any question of adjustment of any loan advanced with that of the energy charges of the consumer, as the billing and payment of energy charges is between the consumer & the DISCOM. The Transmission utility is not involved in the process. Similarly, the infrastructure loan already taken/given or agreed to be taken up on or before the date of this order will be governed/regulated as per the agreement already entered into and there is no question of any immediate refund of such infrastructure loan already taken/given as clarified in para 55.

We, however, direct that the 'remunerative cost' analysis be taken up immediately for any likely relief of the user for its capital investment on the dedicated feeder including the infrastructure loan paid by them to M/s OPTCL.

57. **CONCLUSION**

- a) The power of review is not circumscribed or to be made only if there is a clerical mistake or error apparent on the face of the record. It can be exercised, if there are other sufficient reasons. In the instant case, there was need to bring out clarity and distinction with regard to supervision charges, infrastructure loan, remunerative cost analysis, load centre, role of DISCOMs, Transmission utility vis-à-vis the user of EHT lines. Hence, it called for a detailed review in order to remove the doubts and bring out clarity of role of DISCOMs, Transmission utility and the EHT user etc.
- b) Any obligation to supply of power to any prospective EHT consumer and all commercial dealings and/or contract demand revision of existing EHT consumers lies with DISCOM only. DISCOMs need to take up the necessary interaction with the Transmission licensee on behalf of the consumer as a part of its business obligation.
- c) All 132 KV and above lines/system (including dedicated EHT feeder) are part of the Transmission system. The practice of metering arrangement at the EHT consumer premises, at the cost of consumer, could be initiated for billing purpose as DISCOM's drawl from GRIDCO as well as DISCOM's billing to the consumer.
- d) After completion and successful charging of the dedicated feeder, the ownership of the EHT line/system should be handed over to M/s OPTCL on payment of the cost of the system at a reasonable basis. The consumer should be freed from further maintenance expenses and responsibility.
- e) The principle of remunerative calculation, which has been provided in the OERC Distribution (Condition of Supply) Code, 2004, for creation of distribution network, will also mutatis mutandis be applied for creation of transmission network.
- f) (i) In case dedicated EHT lines/system is constructed and charged by the 'User' itself, OPTCL is entitled for 6% supervision charge. Testing fee of Electrical Inspector is not included and this should be borne by the User as an additionality.

- (ii) In case the dedicated lines/system is designed, erected and commissioned by OPTCL on behalf of the User, then OPTCL shall charge 16% departmental charge (including testing fee of the Electrical Inspector). The total capital cost including departmental charge payable by the User shall be approved by the Commission.
- g) The practice of asking for 'Infrastructure Loan' from any consumer's of DISCOM or from any generator for the dedicated feeder/dedicated transmission lines as a condition of connectivity agreement should stop from the date of the order. However, the infrastructure loan already taken or agreed to be taken on or before the date of this order will be governed/regulated as per the agreement already entered into and there is no question of any immediate refund of such infrastructure loan already taken/given.
- h) There should not be any question of adjustment of loan advance with the energy bill of the consumer, as the billing and payment of energy charges is between the consumer & the DISCOM and Transmission utility is not involved in the process.
- i) The 'remunerative cost' analysis be taken up immediately for any likely relief of the user for its capital investment on the dedicated feeder including the infrastructure loan paid by them to M/s OPTCL.

58. Accordingly, both the cases are disposed off.

Sd/-  
**(B.K. Misra)**  
Member

Sd/-  
**(K.C. Badu)**  
Member

Sd/-  
**(B.K. Das)**  
Chairperson