

**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. 26/2007

M/s Jayshree Chemicals Limited (JCL)

... Petitioner

- Vrs -

South Eastern Electricity Supply Company of
Orissa Limited (SOUTHCO)

... Respondent

Date of Hearings : 31.07.2007 and 27.10.2007
Date of Order : 01.12.2007

ORDER

1.0 M/s Jayshree Chemicals Ltd. (JCL), Ganjam filed an application on 25.06.2007 in the Commission for implementation of the paragraph No. 5.31 of the Retail Supply Tariff order dated 23.03.2007 passed by this Commission in Case No. 60 of 2006 by SOUTHCO which interalia stated as under:-

“..... JCL, Ganjam submitted that they are a loss making concern employing thousands of employees but cannot continue to sustain their operation unless they are given a lower tariff comparable to that has been allowed to the industries under special tariff category. In case that is not permitted they may be allowed the facility of open access from CESU. Withdrawal from SOUTHCO of a consumer and permitting open access from CESU will certainly have an adverse impact on the financial help of SOUTHCO.

SOUTHCO has been granted a bulk supply price much lower than the price they were charged during the FY 06-07 compared to other licensees. This should incentivise their functioning and SOUTHCO and JCL should

work out a special agreement so that JCL continues as a consumer of SOUTHCO to the mutual advantage of both.”

- 2.0 The petitioner JCL at Para 19 of its application submitted that without any rhyme or reason, SOUTHCO – the respondent is avoiding and delaying implementation of the order of the Hon’ble Commission passed in paragraph No. 5.31 of Retail supply Tariff order dated. 23.03.2007 in Case No. 60 of 2006 and therefore prayed before the Commission to intervene in the matter and direct SOUTHCO to implement the Order of the Commission passed in paragraph No. 5.31 of the Retail Supply Tariff order dated 23.03.2007 in Case No. 60 of 2006 for signing the special agreement with the Petitioner Company at the rate of Rs. 2.40 per unit from 01.04.2007 to 31.03.2008.
- 3.0 The Commission registered the application as Case No. 26 of 2007 and issued notice to both JCL and SOUTHCO vide letter no. 1121 dtd. 04.07.2007 to attend the hearing on the question of admission of the case on 31.07.2007.
- 4.0 Accordingly, the case was taken up for hearing on 31.07.2007. Mr. Ashok Kumar Parija, Sr. Advocate and Mr Prabhu Prasad Mohanty Advocate are present on behalf of the petitioner M/s. Jayashree Chemicals Ltd. (JCL). Mr B K Nayak, Advocate and Mr. B N Mallick, AGM are present on behalf of Respondent M/s SOUTHCO.
- 4.1 During hearing on 31.07.2007, Mr. Parija, Sr. Counsel submitted on behalf of JCL that the petitioner industry is the only power intensive industry under SOUTHCO. He submitted that during the period from FY 2002-03 to FY 2005-06 when the rate of BST for SOUTHCO was about 131 Paise/KWH, SOUTHCO and JCL both signed a special agreement under which power was supplied to JCL at 240 Paise/KWH during those years. He submitted that the Hon’ble Commission has fixed-up the Bulk Supply Price Rate and transmission tariff for SOUTHCO for FY 2007-08 which totals to 98 paise/KWH due to which the power supply under the special agreement should have been at least 33 Paise less than 240 Paise/KWH. The Sr. Counsel further submitted that in Minutes of Discussion dtd. 31.03.2007 held between JCL and SOUTHCO, it is specifically mentioned at Para 6 as under:-

“JCL requested to extend concessional tariff of Rs 2.40 (consolidated energy charges) from 01.04.2007. JCL also stated that they will increase their CD to 10 MW as against 8 MW. SOUTHCO has agreed to propose this proposal to the Board for consideration for special tariff for a period of 1 year i.e. from 01.04.2007 to 31.03.2008, which is further subjected to final approval of Hon’ble Commission.”

The Sr. Counsel Mr. Parija further submitted that SOUTHCO vide letter No. 9717 dtd. 02.06.2007 intimated the petitioner company JCL that the Board of Directors of SOUTHCO has proposed a rate of 272 Paise / KWH as against the usual RST rate of 290 Paise / KWH applicable to JCL which is totally contrary to the spirit of Para 5.31 of the Order dtd. 23.03.2007 of the Commission. The Sr. Counsel therefore prayed before the Commission to intervene in the matter.

4.2 Mr B K Nayak, Advocate on behalf SOUTHCO submitted that Para 5.31 of the Tariff Order dtd. 23.03.2007 is not a direction but an observation of this Commission to execute a special agreement between the Petitioner and Respondent to the mutual advantage of both the parties. The Counsel submitted that during the financial year 2007-08 the Commission has approved the ARR for SOUTHCO with the deficit of Rs. 3.78 crore and hence any concession to JCL would only add to further deficit of SOUTHCO. The Counsel submitted that as per the Audited Accounts of JCL available with SOUTHCO, JCL has been continuously making profit and the entire carry forward losses have already been wiped out. The Counsel further submitted that considering the long-term business relationship and the sustainability of both the organizations as well as in keeping with the observation at Para 5.1 of Tariff Order of this Hon’ble Commission, SOUTHCO has proposed a rate of 272 Paise/KWH, which is genuine and reasonable. The Counsel of the Respondent requested the Commission to impress upon the Petitioner to accept the aforesaid rate and withdraw the Writ Petition filed in Hon’ble Orissa High Court by JCL.

4.3 After hearing both the parties, the Commission directed the Petitioner to file the copy of the Writ Petition filed before OHC along with the copy/copies of the Orders of Hon’ble High Court, if any, within 10 days.

5.0 In accordance with the Order of the Commission, the petitioner filed the copy of the W.P.(C). No. 6899 of 2007 on 21.08.2007 for perusal of the Commission. The salient features of the Writ Petition in brief are as under:

- (a) In the writ petition the petitioner has challenged the letter No. 2900(6) dated 21.05.07 issued under Section 24 (1) of the Indian Electricity Rules, 1910 by the Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. against a disconnection notice directing the petitioner to pay a sum of Rs. 9,38,57,896.00 which includes amongst others the energy charges for the month of April, 2007, calculated on the retail supply tariff rate of Rs. 2.90 per KWH amounting to Rs. 1,85,13,054.00 arrears of Delayed Payment Surcharge amounting to Rs. 3,37,52,370.00 which is not payable and electricity Duty amounting to Rs. 4,17,77,603.00 which is stayed by the Hon'ble Court in W.P.(C) No. 1205 of 2004 by 2nd June, 2007 failing which power supply to the petitioner premises would be disconnected on 3rd of June, 2007. The actual energy charges for the month of April, 2007 calculated @ Rs. 2.40 per kwh would be Rs. 1,52,07,013.00.
- (b) The petitioner has also challenged the bills for the month of April 2007 raised by SOUTHCO @ Rs. 2.90 per KWH at a higher rate instead of the rate agreed between the parties i.e. between the petitioner and SOUTHCO at Rs. 2.40 per kwh (consolidated energy charges) from 01.04.07 till 31.03.08, as per the Minutes of the Meeting dated 30th and 31st of March, 2007. That although the petitioner has been time and again informing SOUTHCO to revise the bill and calculate the Energy Bill @ Rs. 2.40 per kwh on 10 MW instead of 8 MW as per the Minutes of Meeting dated 30th and 31st of March, 2007, SOUTHCO has not been doing so and has now threatened for disconnection of power supply to the petitioner's industry. The said bill dated 07.05.07 and letter dated 17.06.07 issued by SOUTHCO are arbitrary and illegal and violative of the provisions contained in the Indian Electricity Act, 2003 and Rules made there under and violative of the provisions contained in Article 19(1)(g) of the Constitution of India and liable to be quashed.

- (c) The petitioner has prayed that SOUTHCO by not agreeing to the proposals and/or observation of OERC in its Tariff Order dated 23.03.07 and not allowing the petitioner to avail electrical energy to its plant on a offered tariff of Rs. 2.40 per kwh and not approving the same in its Board Meeting, not entering into a Special Tariff Agreement for the period 2007-08 as well as not placing the same before the OERC for its approval is an act violative of the principles of natural justice and depriving the petitioner to carry on its business thereby violating the provisions contained in Articles 19(1)(g) of the Constitution of India.
- 6.0 The Commission has issued notice vide Letter No. 1748 dtd. 05.10.07 to both the petitioner and the respondent to attend the hearing on 27.10.2007.
- 7.0 Accordingly, the case was taken up for hearing on 27.10.2007. Mr. Ashok Kumar Parija, Sr. Advocate and Mr Prabhu Prasad Mohanty Advocate are present on behalf of the petitioner M/s. Jayashree Chemicals Ltd. (JCL). Mr B K Nayak, Advocate and Mr. B N Mallick, AGM are present on behalf of Respondent M/s SOUTHCO.
- 7.1 During the hearing Mr. Parija, Sr. Counsel submitted on behalf of JCL that the petitioner industry is the only power intensive industry under SOUTHCO. Apart from the detailed argument earlier submitted in the Commission during hearing on 31.07.2007 mentioned in Para 4.1 above, Mr Parija submitted before the Commission that JCL is agreeable to increase the contract demand from 8 MW to 10 MW and is willing to pay to SOUTHCO at a Special Tariff of 257 Paise per kwh which is the prevailing rate of RST of 290 Paise per kwh minus the element of reduction of BSP of about 33 paise per kwh. He requested the Commission to direct SOUTHCO to accept this new offer of JCL and execute the special agreement for the period from 01.04.2007 to 31.03.2008.
- 7.2 Mr B K Nayak, Advocate on behalf SOUTHCO submitted that Para 5.31 of the Tariff Order dtd. 23.03.2007 is not a direction but an observation of this Commission to execute a special agreement between the Petitioner and Respondent to the mutual advantage of both the parties. . Apart from the detailed argument earlier submitted in the Commission during hearing on 31.07.2007

mentioned in Para 4.2 above, Mr Nayak requested the Commission to allow the proposed Special Rate of 272 Paise per kwh for JCL for FY 2007-08. As JCL is earning profit and SOUTHCO is incurring loss at present, Mr Nayak submitted that no rate below 272 Paise per kwh is acceptable to SOUTHCO. Further, it was clarified by SOUTHCO that, the total consumption made by JCL during FY 2006-07 against the reduced contract demand of 8.00 MW was 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 per kwh.

- 8.0 The Commission had given a direction for execution of a special agreement between the petitioner and the respondent. It was not expression of pious desire as submitted by the learned advocate for the respondent. The sole objective is financial viability of SOUTHCO regular cash in flow from an EHT consumer for whom JCL is the higher provider of revenue. In fact, SOUTHCO has been entering into special agreement with the JCL even without the knowledge of the Commission and absorbing the gap in the ARR which came to the Commission's notice only during the public hearing of 2006-07. Thus, until open access becomes fully operational the Commission preferred continuance of JCL as a consumer of SOUTHCO which could be a win-win situation for both.

The Commission also took into account the submission made by the respondent that while JCL made a profit during the financial year 06-07 even paying at a tariff of 272 paise per unit, SOUTHCO continues to suffer financial losses which is mounting from year to year. Hence, a loss making public service utility like SOUTHCO should not be subjected to further financial burden by granting a tariff lesser than the rate at which they made payment during the financial year 06-07.

We have also considered the submission made by the petitioner that JCL was a BIFR referred company and SOUTHCO had agreed during hearing that concessional tariff may be given a tariff of 240 paise per unit. The respondent submitted that they have no objection for accepting the rate of 272 paise per unit provided the differential between the normal and special tariff is allowed as a pass through in ARR. The Commission would like to observe that allowing this gap to the licensee will defeat the very objective of grant of special tariff to a consumer

by the licensee which they are expected to meet out of the efficiency gain achieved by the licensee.

Hence, SOUTHCO and JCL should come into settlement about a tariff to be mutually arrived at which will be a win-win situation for both as a part of special agreement.

However, the Commission would like to clarify that the differential between normal and special tariff as agreed between the parties will not be allowed as a pass through in ARR which has to be met out of the efficiency gain of the licensee & this shall not be considered as a precedent for fixation of tariff for either this consumers or consumers similarly placed which has to be decided following the normal rules of procedure.

This disposes of the petition.

Sd/-
(K C Badu)
Member

Sd/-
(S K Jena)
Member

Sd/-
(B K Das)
Chairperson