

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

**Present: Shri U. N. Behera, Chairperson
 Shri A. K. Das, Member
 Shri S. K. Parhi, Member**

Case No. 77/2007

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| M/s. Tata Sponge Iron Ltd. | | Petitioner |
| -Vrs.- | | |
| M/s. OPTCL | | Respondent |

In the Matter of: **An application challenging inaction of OPTCL refunding excess supervision charges collected from the applicant Company in respect of construction of 220 KV S/C line on D/C tower from Joda Grid Sub-station to the applicant-M/s. Tata Sponge Iron Ltd. Premises, Joda with one number 220KV feeder bay at Joda-Sub-Station.**

For the Petitioner: Shri P.P. Mohanty, Advocate
 Shri S. K. Swain, Head Legal, M/s. Tata Sponge Iron Ltd.

For the Respondent: Shri L. N. Mohapatra, Advocate
 Shri B. P. Mishra, CGM (RT&C), OPTCL,
 Shri N. C. Swain, Sr. GM (Construction-I), OPTCL

ORDER

Date of Hearing: 17.01.2017

Date of Order: 29.03.2017

- The petitioner M/s. Tata Sponge Iron Ltd. has filed the present petition on 28.12.2007 challenging inaction of OPTCL for refund of excess supervision charges collected from the applicant Company in respect of construction of 220 KV S/C line on D/C tower from Joda Grid Sub-station to the applicant-M/s. Tata Sponge Iron Ltd. Premises, Joda with one number 220KV feeder bay at Joda-Sub-Station.
2. Brief fact of the case is that M/s. Tata Sponge Iron Ltd. is a company registered under the Companies Act, 1956 and manufactures sponge iron at its factory at Bileipada. To support its sponge iron production, the petitioner has installed two Captive generating plants of 7.5 MW and 18.5MW in its factory premises, which operates by using waste heat of its Kiln No.1, 2 & 3. The petitioner Company has filed the above case under S. 86(1)(f) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) for adjudication of dispute as to re-fundability of supervision charges collected from it by the respondent-OPTCL in respect of construction of dedicated transmission line of 7.1 Km of 220 KVS/C line on DC tower

from Joda Grid Sub-Station to M/s. Tata Sponge Iron Ltd., Joda with one no.220 KV feeder bay at Joda Grid Sub-Station. For the said purpose the petitioner Company requested the respondent-OPTCL to sanction the estimate and to fix supervision charges. The Chief Engineer (T.P),OPTCL vide their letter dated 20.10.2005 had approved technical sanction for construction of 220 KV S/C line on D/C tower from Joda Grid Sub-Station to the petitioner's premises and further directed to execute the work after payment of supervision charges. The total amount of construction of 220 KV line and bay at Grid was estimated at Rs.12,01,87,600/- and supervision charge was fixed at Rs.1,98,30,800/-.

3. The AGM(Elect.), OPTCL, Jharsuguda in its letter dated 3.11.2005 pursuant to letter No. 1192 dated 20.10.2005 of the Chief Engineer (T.P),OPTCL directed the petitioner-Company to deposit a sum of Rs.1,98,30,800/- as supervision charges for construction of 220 KV line and bay before starting the work. Accordingly, the Petitioner-Company deposited a Demand Draft of Rs.56,63,400/- after deducting TDS and Education Cess from the total amount of Rs.60.00 lakhs towards part payment of Supervision Charges. Again on 11.02.2006 the petitioner submitted another demand Draft of Rs.56,63,400/- after deducting TDS and Education Cess from the total amount of Rs.60.00 lakhs towards part payment of Supervision Charges for construction of the aforesaid line and bay. After part payment of Rs.120.00 Lakhs (including deduction of TDS & Education Cess) towards supervision charge the petitioner requested OPTCL to review and re-examine the sanctioned estimate, as the estimate amount of Rs.12,01,87,600/- was considered to be on higher side for a line of 7 Km and its bay as the total value of the project considering all the costs was found to be Rs.7,41,74,111/-.Thereafter, on 30.12.2006 the petitioner approached the respondent-OPTCL for charging of the said line as the project work including bay at Joda Grid was going to be completed. In response to the said request of the petitioner the Respondent-OPTCL asked for deposit of the differential amount of supervision charges based on the initial estimate. The petitioner-Company, to avoid further delay in commissioning of the aforesaid line deposited the balance amount of Rs.73,99,987/- after deducting TDS and Education Cess as supervision charges under protest as per the initial letter of the Respondent bearing No.TR/WKL/IV/175/2005/1192 dated 20.10.2005. By letter dated 03.02.2007 the petitioner-Company submitted the details of actual expenditure of construction for 220 KV line and Bay amounting to Rs.7,41,05,000/- instead of Rs.12,01,87,600/- as estimated earlier.
4. The Petitioner further submitted that being a captive generating plant, the petitioner-company can construct, maintain and operate dedicated transmission line as per Section 9 of

the Act, hence the petitioner-Company is not to pay the supervision charges to the respondent-OPTCL in respect of construction of its 220 KV line from its CGP to Joda Grid Sub-Station and bay at the said Sub-station. In the present case as the respondent –OPTCL has not constructed, executed the aforesaid line with bay for and on behalf of the petitioner-company, the levy of supervision charges is illegal, arbitrary, bad in law and violates the provisions of the Act and rules made thereunder. The aforesaid 220 KV line & Bay at Joda Grid Sub-Station has been constructed by the approved Contractor of the respondent-OPTCL under supervision of its Engineers and the same is approved by the Electrical Inspector upon deposit of all statutory dues required for energisation. Therefore, the petitioner-Company is not liable to pay the supervision charges, and is entitled to get refund of the same as both the Chief Engineer(T.P), OPTCL and the Asst. General Manager(Electrical),OPTCL, Jharsuguda in their letter dated 23.02.2007 & 01.03.2007 respectively have admitted for refund of the same. Hence this case is filed by the petitioner – Company M/s. Tata Sponge Iron Ltd. Under Section 86(1)(f) of the Act. In the above circumstances, the petitioner has requested that the Commission may direct the respondent-OPTCL to revise the technical sanction order dated 20.10.2005 on the basis of actual expenditure incurred by the Petitioner-Company and refund the excess supervision charges collected illegally from it and the Commission may decide the present case as per the provision of Section 86(1)(f) of the Act as the captive generating plant of the Petitioner-Company is treated as a generating Company as per the provisions of Sec.2(28), (29) & (30) of the said Act.

5. During hearing on 09.09.2008 on maintainability of the application, the counsel of the respondent – OPTCL submitted that the present case is beyond the scope of adjudication by this Commission under Section 86(1)(f) of the Act. The Commission has been empowered under Section 86(1)(f) of the Act to adjudicate disputes between generating companies and licensees or to refer such disputes to arbitration. The scope of this power is confined to matters covered under the Act and Regulations framed thereunder. He also stated that the petitioner on its own admission is a Captive Generating Plant (CGP) and cannot be named as a generating company for the purpose of adjudication of disputes in question. The CGP has distinct identity and stands different from a generating company. Section 9 of the Act, 2003 stipulates to regulate the CGP in the same manner as a generating station of a generating company for the purpose of grid discipline in respect of its supply of electricity through the grid. It cannot, therefore, be assumed that the petitioner has been identified as a generating company for the purpose of Section 86(1)(f) of the Act, 2003. The submission made by the petitioner on defining Ss. 2(28) and 2(30) in contrast to Section 2(8) of the Act, 2003 is

misconceived. Since a CGP is allowed to establish, operate and maintain dedicated transmission line, it cannot be equated to acquire the place of a generating company under Section 86(1)(f) of the Act. A CGP can establish dedicated transmission line, if it comply the requirement of Grid Code and standards of grid connectivity, technical standards for construction of Electrical line under supervision of the Respondent. So the petition of the Petitioner-Company seeking adjudication by the Commission is liable to be dismissed as not maintainable and in the light of order passed by the OERC on 30.05.2008 in the case of M/s. Rohit Ferro-Tech Ltd. Vrs. OPTCL in Case No.76 of 2007 which is also applicable to the present case.

6. The Commission after hearing the parties on maintainability of the petition and perusal of case records admitted the case vide their Order dated 01.12.2008 holding that in accordance with Section 2 (28) of the Act the Petitioner is a Generating company. The commission further held that a CGP is only a species of generating station broadly defined in Section 2 (30) of the Act, 2003. The owner of CGP is a generating company as defined in Section 2 (28) of the Act. As the Petitioner is satisfying the requirement of generating company it can as well seek for adjudication of dispute under Section 86 (1) (f) of the Act, 2003.
7. Being aggrieved by the above interim Order dated 01.12.2008 of the Commission, the respondent-OPTCL challenged the same before the Hon'ble High Court of Orissa in W.P.(C) No.2056 of 2009. The Hon'ble Court vide their judgment dated 09.02.2016 upheld the interim Order dated 01.12.2008 of the Commission by stating that

“11. *considering the law laid down by the Apex Court in case of M/s. D.L.F. Qutab Enclave Complex Educational Charitable Trust(Supra),B. D. Shetty and others(Supra) and Sri Jeyaram Educational Trust & Ors.(Supra) respectively applied the same to the present context, having considered the provisions of the Act so far it relates to the Opp. Party (Petitioner-Company herein) vis-a-vis the petitioner whereby a conclusion can be drawn that the petitioner (Respondent-OPTCL herein) being a “licensee” and the Opp. Party (Petitioner-Company) being a “generating Company” the dispute between the two can be resolved by this Commission in view of the provisions contained under S.86(1)(f) of the Act and as such, the application filed by M/s. Tata Sponge Iron Ltd. is maintainable here. It is nobody’s case that the Opp. Party No.1(Petitioner-Company) has no captive generating plant, rather unequivocally the parties have admitted that the Opp. Party No.1 (M/s. TSIL) has two separate captive generating plants within its premises for its own consumption. But if any surplus power is there then the same*

can be transmitted through the dedicated transmission line to the Grid station for utilization by others. Therefore, when surplus power is being transmitted through the dedicated transmission line, no supervision charge should be demanded by the petitioner (Respondent-OPTCL herein).

- 12. In view of the foregoing discussions, it is made clear that the Commission has got jurisdiction to adjudicate the disputes between the petitioner(OPTCL) and the Opp. Party No.1(M/s. TSIL) being a licensee and generating Company respectively under Sec. 86(1)(f) of the Act and as such, the application filed before such Commission is maintainable. Thus, the impugned order dated 01.12.2008 passed by OERC in Case No.77 of 2007 vide Annexure-5 to the writ petition is upheld. Consequently, the writ petition merit no consideration and the same is dismissed. No cost.”**
8. After disposal of W.P.(C) No.2056 of 2009 by the Hon’ble High Court of Orissa, the petitioner-Company had filed its notes of submission along with the said judgment dated 09.02.2016 stating therein that as the respondent –OPTCL has not challenged the aforesaid judgment of the Hon’ble High Court of Orissa passed in the above writ petition, the same is binding on it. The Hon’ble Court has specifically in paragraphs No.7 & 11 of the said judgment held that the petitioner- company M/s. TSIL is not liable to pay supervision charges to OPTCL, the respondent herein and prayed for necessary directions to OPTCL for refund of the supervision charges collected from it along with interest.
9. Thereafter, the case was taken up for final hearing and disposal by the Commission on 17.01.2017 with due notice to the parties concerned. The Commission heard the parties and vide interim order dated 24.01.2017 by concluding the hearing has directed them as follows:-
- “ OPTCL is directed to submit the application/letter dated 06.09.2004 of M/s. TSIL to GRIDCO Ltd. for availing power supply to their factory and the letter of GRIDCO dated 01.10.2004 in response to the above to the petitioner accepting the same with terms and conditions of such power supply. The petitioner and the respondent are also further directed to file their written note of submission, if any, within seven days from the date of this order.”**
10. Accordingly, both the petitioner and the Respondent have filed their written note of submission along with copies of the letters dated 06.09.2004 and 01.10.2004. After going through the case records, considering the content of the letter, written submissions and arguments made during hearing and specifically the directions/observations of the Hon’ble

High Court of Orissa in W.P.(C) No.2056 of 2009 wherein the Hon'ble Court has observed that *"it is nobody's case that the Opp. Party No.1(Petitioner-Company) has no captive generating plant, rather unequivocally the parties have admitted that the Opp. Party no. 1(M/s. TSIL) has two separate captive generating plants within its premises for its own consumption. But if any surplus power is there then the same can be transmitted through the dedicated transmission line to the Grid station for utilization by others. Therefore, when surplus power is being transmitted through the dedicated transmission line, no supervision charge should be demanded by the Respondent-OPTCL herein."* We come to the conclusion that Hon'ble High Court has unequivocally decided the matter regarding payment of supervision charges. Therefore, the case pending here automatically crumbles.

11. The case is disposed of accordingly.

(S. K. Parhi)
Member

(A. K. Das)
Member

(U. N. Behera)
Chairperson