

ORISSA ELECTRICITY REGULATORY COMMISSION

BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present : Shri B.K. Das, Chairperson
Shri S.K. Jena, Member
Shri K.C. Badu, Member

Case No.12/2008

M/s. WESCO, Sambalpur **Petitioner**
-Vrs.-
M/s. OPGC, Sambalpur & OPTCL, BBSR **Respondents**

For the Petitioner: Mr. B.K. Nayak, Advocate, Mr. G.C. Mohanty, DGM
(Com.) WESCO

For the Respondents: Mr. Dhaneswar Mohanty, Advocate for OPGC,
Mr. K.N. Parida, G.M. (R&T), OPTCL

Date of Hearing: 29.10.2008

Date of Order: 05.11.2008

ORDER

Mr. B.K. Nayak learned counsel for WESCO stated that the petitioner has filed the petition for review of the order dated 22.12.2007 passed by the Commission in Case No.49/2007 under Regulation 70 of OERC (Conduct of Business) Regulations, 2004, which is also coming within the purview of Order 47 Rule-1 of Civil Procedure Code, 1908. The Commission had observed in the order dated 22.12.2007 in Case No.49/2007 as follows:

“Xxxxxx From the available records specifically the minute drawn up between OPGC and WESCO, it is obvious that this 33 KV line from Remja to ITPS is a line owned by the Orissa Power Generation Corporation.

From the WESCO letter No.63 dt.10.01.2006 addressed to Executive Engineer, Jharsuguda, it is observed that a tapping has been permitted to M/s Global Coal and Mining Pvt. Ltd. for temporary drawl of power till the completion of 33/11 KV Bandhabahal s/s.

Since, this 33 KV line is intended for meeting the emergency drawl of OPGC power plant, it is desirable that this tapping should be quickly removed and connected to Bandhabahal 33/11 KV s/s with proper protection arrangement so as not to interrupt power supply in times of necessity.

In future also WESCO should not arrange to give power supply to any prospective consumer to maintain this as a dedicated feeder for meeting emergency supply in case of any exigencies. In the matter of availing shut down from Remja Grid s/s, only OPGC is competent to avail a shutdown from this s/s as they are the owners of the line. In case of necessity WESCO may make mutual arrangement for availing shutdown with OPGC.

It will be desirable if the Bandhabahal 33/11 KV s/s is connected from some independent source of power from WESCO's 33 KV network.

XXXXXXXXXX”

2. According to the above order, OPGC is the owner of the 33 KV line erected from Remja to Ib TPS. Tapping has been permitted to M/s Global Coal and Mining Pvt. Ltd. for temporary drawl of power till completion of 33/11 KV Bandhabahal s/s. As the 33 KV line is intended for meeting the emergency drawal to OPGC power plant, M/s Global Coal and Mining Pvt. Ltd. tapping should be removed and connected to Bandha Bahal 33/11 KV s/s with proper protection arrangement so as to avoid interruption of power supply as and when it is necessary. WESCO should not arrange in future to give power supply to any prospective consumer. In the matter of availing shutdown from Remja Grid s/s, only OPGC is competent because it is the owner of the line. In case of necessity, WESCO may make mutual arrangement for availing shut down with OPGC. But OPGC seeks the direction of the Commission to WESCO not to extend any power supply to any of its consumer from 33 KV line, which was the subject matter in its prayer in case No.49/2007, disposed on 22.12.2007 and seeking the direction of the Commission to WESCO to bill on the tariff applicable for emergency power supply w.e.f. 01.12.2003 except demand charges and also direct to OPTCL to issue line clearance on the 33 KV feeder only to OPGC but not to WESCO. It also further prayed to direct WESCO to execute a formal agreement with OPGC for use of the said line from Brajarajnagar 132/33 KV s/s treating OPGC as a generating company only. OPGC constructed 33 KV dedicated line from the 132/33 KV s/s i.e. Brajarajnagar (Remja Grid) to its premises out of its own fund, which was sanctioned and approved by the Govt. On completion of the construction of 33 KV line, with approval of the Electrical Inspector, the line was charged in 1990. The petitioner WESCO has no right over the same line in any manner whatsoever. OPGC has executed agreement with OSEB on 08.11.1989 and subsequently on 05.06.2000 with the petitioner, who obtained the distribution license for availing power supply to its unit. The said 33 KV line from Brajarajnagar Grid s/s to IB Thermal Power Station is a part of its assets and is being maintained and is being used exclusively by OPGC. As per the provisions of the OER (Transfer of Assets, Liabilities, Proceeding and Personnel of GRIDCO to DISTCOs) Rules, 1998, the said 33 KV line has not been transferred to WESCO. In such view of the matter, Regulation 27 of the OERC Distribution (Conditions of Supply) Code, 2004 has no application.
3. In support of the said stand by OPGC, its counsel relied upon the minutes of meeting held between the CEO, WESCO and the Director (Operation) OPGC on 25.08.2006. Incidentally the same has not been signed by WESCO. As regards to

the above averments, WESCO stated that the 33 KV line was constructed by OSEB for OPGC to provide construction power during the construction of the generating station at IB Thermal and its colony. After the work was completed the said line was transferred to OSEB and subsequently to GRIDCO and at present is under the control of WESCO as per the provision of the Reforms Act and Rules framed thereunder.

4. Mr. Nayak further submitted that as per Regulation 27 of the OERC (Distribution Conditions & Supply) Code, 2004 the entire service line, notwithstanding that whole portion thereof has been paid by the consumer, shall be the property of the licensee and shall be maintained by the licensee, who shall always have the right to use it for supply of energy to any person, unless the line has been provided for exclusive use of the consumer through any arrangement agreed to in writing. After construction of the line, the same shall be the property of the then OSEB as there has been no special agreement for exclusive use of the said 33 KV line by OPGC. In such a case, the meter would have been installed at the take off point instead of consumer end. The said 33 KV line was being maintained by the OSEB, subsequently by GRIDCO and presently by WESCO. As the said 33 KV line is the property of WESCO, M/s Global Coal & Mining Ltd. has been allowed to avail the power supply from the said line. The reference which has been made by the OPGC on 25.08.2006 is mainly on payment of arrear energy bills of OPGC and mode of payment for two villages Dhrubadera and Bargarh which were getting power supply from the said line. During discussion, OPGC was advised not to take line clearance without permission from WESCO to avoid electrical accidents.
5. During hearing of Case No.49/2007, WESCO prayed the Commission for rejection of the application of OPGC and to permit WESCO, the present petitioner for extending power supply to the prospective consumers as and when required. As per discussion on 12.02.1986 between, OSEB and OPGC for construction of different lines at Brajarajnar, Duburi, Tarakera (Rourkela) for the purpose of interconnection of Ib-Thermal power station with OSEB, the Managing Director, OPGC requested for 5 MW of construction power, Member (TDC) OSEB had indicated that it may be possible to supply construction power to OPGC to the extent of 3 MW from Brajarajnar s/s at 33 KV. So, OPGC may send requisition for the construction of 33 KV line from Brarajnar as a deposit work and OPGC may procure the material and entrust the work to OSEB to take up as a deposit work for installation purpose. On the basis of the discussion 12.02.1986 OPGC made communication on 27.12.1986 addressed to the Chief Engineer & Member (TDC), OSEB, Bhubaneswar which is as follows:
“As agreed during discussion, it is requested that an estimate for construction of a single circuit 33 KV line from Brajarajnar to the proposed Ib Thermal Power Plant side (excluding cost of materials) may kindly be furnished in order to enable us to deposit the same with OSEB. A list of materials to be procured by OPGC may be sent to this office in order to procure the material. Construction power requirement of the project will be about 5 MW and the line construction may kindly be completed before June, 1986. In this connection, it is requested that concurrent action may kindly be taken to install 2x12.5 MVA, 132/33 KV

transformers at Brajarajnar s/s in order to enable the project to draw construction power through the proposed 33 KV line. A location map of the project is also enclosed herewith for reference.”

The Managing Director again in its communication dated 03.07.1986 informed the Superintending Engineer, Electrical Circle, Burla as follows:

“Kindly refer to the above letter regarding estimate for construction of a single circuit 33 KV line from Brajarajnar to the proposed Ib Thermal Power Plant site. In this connection, as indicated in our letter a meeting was held with the Chief Engineer, Member (TDC), OSEB in which it was agreed that OSEB would take up construction of the above 33 KV line as a deposit work for which all the materials required shall be procured by OPGC and given to OSEB. A copy of the minutes of meeting held on 12.02.1986 and a copy of OPGC drawing No.1 dated 01.04.1985 is enclosed for reference. It was also discussed in the OPGC Board and Chairman, OSEB also agreed for the above arrangement.”

6. On the basis of the above communication dated 03.07.1986, an estimate was prepared by the E.E., Jharsuguda Electrical Division for a sum of Rs.12,45,495/- for construction of 33 KV power supply to OPGC for Ib Thermal Power Station, Banaharpali under ‘deposit work’ to meet the possible expenditure to be incurred to provide power supply. The work has been executed by Hari Electricals Works after the estimated amount was deposited by OPGC.
7. After completion of the line, it was inspected by the officers of OSEB and was charged, power supply was provided to the Respondent No.1 after execution of necessary agreement on 06.11.1989 with OSEB and on 05.06.2000 with WESCO. The consumer was charged under G.P. tariff for availing power from WESCO. From the said 33 KV line power supply has also been provided to different consumers of village Baragarh and Dhruvadera. From the above it is clearly indicated that the line has been constructed on deposit work basis and upon payment of necessary fees towards supervisory and inspection charges to the OSEB and the supply has been given to the OPGC as well as other consumers. There has been no specific agreement executed for exclusive use of the said line by OPGC.
8. Mr. Nayak further stated that the above documents were not within the knowledge of the petitioner so he had not raised the issues during the hearing of main case i.e. Case No.49/2007. The petitioner could not be able to produce the same and hence review has been sought for. He also cited the following decisions in support of his review petition:

If the attention of the court is not drawn to a material statutory provision during the original hearing, the court will review its judgment. A review can be made to prevent miscarriage of justice or to correct grave and palpable errors. [AIR 1970 SC 5, AIR 1979 SC 1047, AIR 1967 SC 571, 85 (1998) CLT 192]

..... The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in 0.47 R-1. It may allow a review on

three specified grounds, namely: (1) discovery of new and important matter or evidence which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made. (2) mistake or error apparent on the face of the record or (3) for any other sufficient reason. AIR 1954 SC 526.

Review maintainable when important documentary evidence already on record was not brought to the notice of the court: 1973 CWR601.

0.47 R-1 CPC authorises the court, which passed the order, to review the same order at the instance, a party considering himself aggrieved by it, if some new and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake or error apparent on the face of the record or there exists any other sufficient reason: 74(1992) CLT 25, 1992 (II) OLR 15.

A review is not the same thing as or a substitute for an appeal. It is proper that review is a prayer for judicial re-examination of the case in certain specified facts or circumstances. It is a re-examination of a proceeding already concluded and that is what is sought through the application 86 (1998) CLT 688.

9. Mr. Dhaneswar Mohanty, Advocate on behalf of the Respondent No.1 stated that the above review application is not maintainable as the facts raised by the petitioner are not new facts and documents produced by him were with him during the proceeding of the main case i.e. 49/2007, from which the present review arises. For the above contention Mr. Mohanty cited the decision of the Hon'ble Supreme Court 1979 and para 7 of 96(3) CLT, along with last para of the order of the Commission (as quoted in para 1 above).
10. He also stated that the contentions raised by the petitioner in this review, have been raised earlier before the Commission in Case No.49/2007 and after considering those contentions on merits, the Commission had passed the final order and therefore those same points cannot be raised again for review of the said order. He also stated that OPGC had given the work order for construction of the said line to the contractor M/s Hari Electrical Works under the scheme and funds approved by the Govt. of Orissa and it was completed by the said contractor. The plea of 'deposit work' taken by the petitioner is false and in support of that, the petitioner has produced some documents, stating that those were not within his knowledge at the time of hearing of the earlier application in Case No.49/2007 and those documents came to his knowledge after the Commission had passed the order in Case No.49/2007.
11. The petitioner further contended that if the documents filed with review petition, if taken into consideration, the Commission may be enlightened that the 33 KV line from Remja to Ib TPS does not exclusively belongs to OPGC Ltd.
12. In this connection the Respondent has raised objection that those new documents cannot be taken into consideration as because the petitioner has not explained that despite the exercise of due diligence at the time of hearing of the earlier

proceeding, these documents which were not produced. Merely because some documents such as some correspondence for execution of work came to the notice of the petitioner after the order was passed by the Commission, these are not sufficient grounds to review the order. Moreover, the petitioner has not filed any document that they have infact executed the said line, but those documents filed in this review proceeding are very much part and parcel of the earlier proceeding and the Commission had passed order on merit by taking into consideration of the documents also.

13. Mr. Mohanty further referred to the review jurisdiction of the Commission u/s 94 of the Electricity Act, 2003, U/s 10 of OER Act, 1995 and Regulation 70 of OERC (Conduct of Business) Regulations, 2004. All those electricity laws indicated above speak that the Commission shall for the purpose of any inquiry or proceeding, has the powers as are vested in a Civil Court under of CPC, 1908 while trying a suit which includes the review of its decisions, directions and order. Hence, the principles, laws provided under 0.47 R-1 read with S.144 of CPC, 1908 are relevant in this case. The scope and ambit of review jurisdiction under CPC confines for correction of error apparent on the face of the record. Any other attempt except an attempt to correct an apparent error or an attempt not based on any ground set in 0.47 of CPC would amount to abuse of the liberty given to the Commission under Electricity laws and regulations framed thereunder. The petitioner has not satisfied the Commission with any ingredient required for review of the order, rather has come out with an allegation of fraud which requires adjudication in different proceeding with evidence. In view of the above facts and law there is neither new evidence nor error on the face of record in the earlier proceeding and therefore the Commission may reject the review petition of the petitioner with cost.
14. After hearing the parties and perusal of the case records we observe that the review petition under consideration does not satisfy any of the ground for review i.e. (i) discovery of new and important matter or evidence (ii) mistake or error apparent on the face of the record in the earlier proceeding in Case No.49/2007 or (iii) any other sufficient reason under order 47, Rule-1 of CPC, 1908 and therefore rejects the review petition filed by WESCO without cost.
15. This disposes of the review petition filed by WESCO.

Sd/-
(K.C. Badu)
Member

Sd/-
(S.K. Jena)
Member

Sd/-
(B.K. Das)
Chairperson