

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.16/2008

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|---------------------------------------|------|-------------------|
| M/s. OPTCL | | Petitioner |
| Vrs. | | |
| M/s. Emami Paper Mills Ltd., Balasore | | Respondent |

In the matter of: An application Under Section 142 of the Electricity Act, 2003 read with Regulation 1.18(3) of OGC Regulations, 2006 for non-compliance of direction of the Commission

ORDER

Date of Hearing: 13.08.2008

Date of Order: 06.09.2008

Mr. J.P. Das, CGM (O&M), OPTCL for the petitioner and Mr. R.P. Mohapatra, Authorised representative of the respondent are present.

2. Heard the parties at length. The rejoinder filed by the Petitioner and the written argument filed by the Respondent are taken into record.
3. Mr. J.P. Das, CGM (O&M) stated that M/s Emami Paper Mill Ltd. (EPML) during the earlier hearing (17.12.2007) confirmed that, the purchase order for the equipments on the direction of OPTCL have already been placed and that the necessary drawings have been submitted to OPTCL for approval. The EPML proposed to install and commission the equipments under the supervision of OPTCL on or before 31.03.2008. The 132KV Bay Extension at the Balasore Grid Substation of OPTCL and the 132KV line constructed by EPML from the Balasore Grid substation to its factory premises at Balgopalpur are also ready for energisation.
4. Based on the above commitment of EPML the Commission directed OPTCL in its order dated 17.12.2007 in Case No.47/2007 to energize the plant of EPML in line with the interpretation as stipulated in Commission order dated 13.03.2008 in Chapter IX in Case No.37, 38, 45 and 47 of 2007. While laying down certain guidelines for connection with State Transmission System (STS) specifically address the prayer of EPML as under:
 - a) Subject to technical compatibility & maintenance facilities, equipment of makes other than ABB should be accepted by OPTCL.

- b) RTU, Voice and data communication through PLCC up to the nearest SCADA interface point shall be provided by the petitioner. Beyond that including the intermediate grid S/S through sub-SLDC to SLDC shall be provided by OPTCL.
 - c) Since, a CGP is being connected to the grid s/s, distance protection with carrier inter-tripping have to be provided at the respective ends.
5. Mr. Das further stated that EPML did not Act in terms of assurance given before the Commission to install PLCC/SCADA equipment by 31st March, 2008 and also did not come back to the Commission for further extension of the time allowed i.e. 31st March, 2008 thereby grossly violated the order dated 17.12.2007 of the Commission. Therefore, OPTCL has come up with prayer to the Commission
- a. take cognizance of the contravention of the provisions of OGC and non-compliance of the various observations/directions of Hon'ble Commission by the Respondent M/s EPML under Section 142 of the Electricity Act, 2003 read with Regulation 1.18(3) Orissa Grid Code (OGC) Regulations, 2006 and impose penalty as deemed appropriate;
 - b. direct the Respondent M/s EPML to provide PLCC and SCADA equipment as per the provisions of OGC immediately;
 - c. order for imposition of additional penalty on the Respondent M/s EPML in case of continuing failure to comply with the direction of the Hon'ble Commission in providing the PLCC and SCADA equipment; or
 - d. allow the applicant to disconnect the connectivity of the Respondent from the State Transmission System of the Applicant;
 - e. pass such other order as may be deemed fit and proper in the greater interest of justice.
6. Mr. R.P. Mohapatra the authorized representative pointed out that the Commission order does not stipulate that the required facilities will have to be provided by 31.03.2008.
7. No undertaking was given or asked by OPTCL before energization of the line that the Communication facilities shall be provided by the stipulated date.
8. Besides that, Clause 1.18(1) provides that in the case of persistent non-compliance of any of the stipulations of the OGC by any User/beneficiary (other than STU and SLDC), the matter shall be reported by any User/Beneficiary to the Member Secretary of the Grid Coordination Committee (GCC). The Member Secretary of the GCC shall verify and take up the matter with the defaulting User/Beneficiary for expeditious

termination of the non-compliance. In case of inadequate response to the efforts made by Member Secretary of the GCC the non-compliance shall be reported to the Commission. The Commission, in turn after due process, may order the defaulting User/Beneficiary for compliance, failing which; the Commission may take appropriate action. Therefore, Section 142 of the Act, 2003 is applicable only if there is contravention of any terms of the Commission in accordance with Clause 1.18(1) of the Orissa Grid Code (OGC) Regulations.

9. Further, he stated that the petitioner should have reported the matter to the Secretary, GCC, who only should have reported the matter to the Commission in case there, is inadequate response. But no such action has been taken by the Petitioner, so the Commission may dismiss the petition filed by the petitioner u/s 142 of the Electricity Act, 2003 as it is premature and has been filed without exhausting the remedy provided in the OGC Regulation, 2006.
10. Mr. Mohapatra also submitted that since action has already been taken by them and that the supervision of Grid under normal and abnormal conditions is not likely to cause any problem, there was no reason for the petitioner to file this petition before the Commission, when many other industries drawing heavy power or even with CGP have not provided PLCC equipments for speech and data communication.
11. After hearing both parties and perusal of the case records the Commission observes that in the interim order dated 17.12.2007 in Case No.47/2007 it was observed as under:
“The petitioner proposes to install and commission the equipments under the supervision of the respondent on or before 31.03.2008”. The spirit of the Commission’s observation to treat the submission of the petitioner as a solemn assurance in the greater interest of providing connectivity to an EHT consumer is being interpreted as not a direction of the Commission after the petitioner got connectivity. At that point of time appreciating the anxiety of the petitioner for being connected and to avoid delay the Commission accepted the prayer and relaxed the provisions of OGC.

The very same relaxation cannot be treated as matter of right unless circumstances so warrant and the petitioner now raises the question that undertakings were not given before commissioning, claiming that on that ground their action cannot be treated as a violation of any order.

- a. Based on the submission of the petitioner, the Commission’s observation dated 17.12.2007 is an order to the respondent to install and commission the equipments under the supervision of OPTCL on or before 31.03.2008.
- b. The Respondent has failed to comply with the above directions of the Commission by 31.03.2008 and also it did not come up to the Commission with the submission for extension of the target time allowed.

- c. Now, the Respondent has come up to the Commission that the petitioner should have reported to the Member Secretary of GCC for non-compliance of Commission's order under the provision of clause 1.18 of the OGC Regulations, 2006 and in turn the Member Secretary, GCC should have reported to the Commission for non-compliance of the order of the Commission by EPML for appropriate action. But, no such action has been taken by the petitioner and hence, the petition may be rejected as premature. This submission of the respondent should have been made before the Commission on 17.12.2007 instead of indicating that PLCC/SCADA equipment would be installed by 31.03.2008.
12. The above statement of the Respondent does not appear to have any merit because based on his promise relaxation was made to energize the line but now not ready to recognize his responsibility to honour the commitment, nor even ready to explain the delay for not doing his part of the work within the stipulated time. Respondent wants to enjoy the fruit but not ready to admit that it was his responsibility to take expeditious action for comply with the stipulations imposed by the Commission based on the submission made by him. Therefore, the Commission finds sufficient merit in the submission of the petitioner.
13. The petitioner was given an opportunity, he has been heard on the matter and given their submission in writing as well as orally during the hearing. After going through the original order dated 17.12.2007, the submissions made by the petitioner and the submission made by the respondent the Commission found that this is a fit case for awarding punishment for noncompliance for direction by the Commission u/s 142 of the Electricity Act, 2003. We are satisfied that Emami in Case No.47/2007 have contravened the direction issued by the Commission. For this contravention of the Commission's order dated 17.12.2007 the petitioner is awarded the penalty of Rs.10,000/- (Rupees ten thousand only). This token penalty is imposed to bring home for the respondent that he has no option to dishonour the order of the Commission or contravene the provision of the Electricity Act, 2003 and the regulation framed there under.
14. However, we considering the appeal of the Emami Paper we are not levying additional penalty for continuing failure for each day of contravention in view of the submission now made that the speech and data communication of Old Duburi s/s would be established within 30.09.2008.
15. Accordingly, the matter is disposed of.

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

Sd/-
(S.K. Jena)
Member (SK)

Sd/-
(B.K. Das)
Chairperson