

ORISSA ELECTRICITY REGULATORY COMMISSION

**BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

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

Case No.21/2008

M/s.Central Electricity Supply Utility of Orissa (CESU) **Petitioner**
-Vrs.-
M/s.Grid Corporation of Orissa (GRIDCO) **Respondent**

**In the matter of : Year End Adjustment Bill claimed by GRIDCO
for the FY 2000-01**

Date of Hearing: 19.01.2009

Dated of Order: 01.07.2009

ORDER

Mr. B.K. Nayak, Advocate for the petitioner, Mr. S.K. Harichandan, Manager (Law), CESU, Mr. H.L. Roy, GM (F), CESU, Mr. S.K. Sahu, AGM (Fin.), CESU, Mr. S.K. Parida, AGM, GRIDCO and Mr. S.K. Sahoo, AGM (F), PP, GRIDCO are present.

2. Mr. S.K. Parida, AGM (BST), GRIDCO has submitted a claim of year-end adjustment bill aggregating to Rs.12,80,14,659 in respect of CESU on account of over drawl of energy over and above the approved quantum by the Commission for the year 2000-01. Against such claim of GRIDCO, CESU in June, 2008 has raised objection on the ground that the claim was not reviewed by the Commission and GRIDCO did not comply the tariff orders dated 19.01.2001 in Case No.27/2000 passed by the Commission. The same matter was taken up by other DISTCOs for which CESU did not go for appeal separately. The petitioner has indicated that the power purchase bill for excess drawl has not been raised as per actual cost which the Commission stipulated in tariff order dated 19.01.2001 in case No.27 of 2000 (vide para 6.29.4). The petitioner urged that cost of additional power purchase at actual considering the transmission loss of 3.7% as allowed by the Commission, was to be computed by GRIDCO for billing. The petitioner has requested the Commission to adhere to the normative loss level while fixing the actual level of power purchase cost for additional quantum of power purchased over that approved by the Commission.
3. As revealed from the bill submitted by GRIDCO to CESU, the latter had overdrawn 89.5964 MU excess for which GRIDCO billed an amount of Rs.12.80 crore. In this connection, the Commission in its order dated 19.04.2002, relating

to BST (in revenue requirement for 2001-02) has allowed Rs.108.25 crore towards previous year loss (2000-01) due to overdrawal by distribution companies and past period bill of NTPC. The previous loss includes Rs.60.13 crore towards excess power purchase cost beyond the approved level during the year 2000-01. The petitioner claimed that Commission had allowed Rs.1224.69 crore (Rs.1164.56+Rs.60.13) for purchase of 11011.38 MU as against the actually power purchase cost of Rs.1184.98 crore for purchase of 11281.07 MU for FY 2000-01. Taking the above fact into consideration, the Commission in similar occasion quashed the claim raised by GRIDCO towards year-end adjustment bill of NESCO and WESCO in case Nos.62 & 74 of 2003 and that of SOUTHCO in case No.06 of 2006. CESU, therefore, requested the Commission to condone delay in filing the petition.

4. The Commission after admitting the case, directed CESU to explain the reason for delay in filing the petition. Mr. B.K. Nayak counsel for CESU, in course of hearing submitted the following facts for appraisal of the Commission.
 - (i) That the respondent has raised the above mentioned amount against the petitioner for the FY 2000-01 on 13.08.2003 which was not accepted by the petitioner and the same was communicated to the respondent on 16.05.2005.
 - (ii) GRIDCO informed the four DISTCOs including CESU for reconciliation of back to back loan as per direction of the Commission and also requested to depute concerned officials for finalization of reconciliation work which would be signed by both the parties for necessary submission before the Commission. The reconciliation work was going on in between GRIDCO and CESCO officers, pursuant to the communication dated 16.05.2005. Several meetings were also held without any fruitful result.
 - (iii) On 28.09.2005 the General Manager (F)-cum-Company Secretary of CESU in his communication to the Sr. General Manager (F), CF, GRIDCO furnished the information under different heads including power purchase liability upto 31.03.2005. Therein CESU has denied its liability towards the claim of GRIDCO i.e. demand of Rs.12,80,14,659/- towards year-end adjustment for FY 2000-01.
 - (iv) That, on 02.11.2005 GRIDCO on its own prepared a reconciliation statement with the signature of its representative and sent to the CESU for signature. CESU did not accept it and on 16.03.2006 sent a revised statement to GRIDCO.
 - (v) On 30.05.2007, the Sr. G.M. (PP), GRIDCO requested the CEO, CESU to accept the reconciliation statement upto 2004-05 and to depute officers for reconciliation of BST dues for FY 2005-06 and FY 2006-07. Again on 06.07.2007 Director (Finance), GRIDCO informed the CEO, CESU about reconciliation of outstanding dues and signing of joint reconciliation statement.

- (vi) On 02.08.2007, CESU sent a signed statement of back-to-back loan and BST on the basis of previous reconciliation dated 31.03.2005. GRIDCO did not accept it.
 - (vii) On the request of GRIDCO dated 11.04.2008, a detailed discussion was made with regard to year-end adjustment bill of DISTCOs with the petitioner and the minutes were drawn in which CESU objected to the year-end adjustment raised by GRIDCO for FY 2000-01.
5. Mr. Nayak stated that notwithstanding the conciliation made from time to time, when the matter was not resolved, the respondent continued to raise the demand on year-end adjustment bill for FY 2000-01 in all the times. The petitioner having no other way filed the present case before the Commission for waiver of demand as well as the DPS.
 6. He further stated that a joint conciliation statement was prepared in the presence of the officers of OERC, wherein it has been agreed between the parties that the demand raised by GRIDCO for FY 2000-01 is subject to the decision of the Commission in Case No.21 of 2008.
 7. In view of the above, CESU prayed the Commission to adjudicate the matter on merit taking into consideration the contention raised by CESU and the objection filed by GRIDCO.
 8. Mr. S.K. Parida, AGM (BST), GRIDCO stated that CESU had neither raised any objection against the said year-end adjustment bill within 30 days, nor came for a discussion with GRIDCO within the stipulated period of one month for settlement of dispute as per clause-13 of Bulk Supply Agreement. GRIDCO further stated that CESU had filed the petition after a gap of about five years, which means the limitation period was over. GRIDCO, therefore, prays the Commission that the petition must be discussed as per Section 3(1) of the Limitation Act. GRIDCO quoted different grounds under which delay could be condoned :-
 - (a) Illness may be sufficient cause, but it must be proved that the man was utterly disabled to attend to any duty.
 - (b) Imprisonment in a criminal case may be a sufficient cause and the time spent in jail may be deducted.
 - (c) A bonafide mistake of fact on the part of the party will be sufficient cause within the meaning of S.5 of the Limitation Act, 1963.
 - (d) Mistaken advice given by the legal practitioner may, in the circumstances of particular case give rise to sufficient cause. If the mistake of the legal adviser is the result of negligence, delay cannot be condoned. Mistake of a junior counsel is not a sufficient cause, nor is advice of a counsel's clerk.
 - (e) A mistake or ignorance of law is not a sufficient cause. But, if the mistake is bonafide, it will be considered as sufficient cause. Delay due to conflicting

decisions misleading the party in filing appeal is a good ground for condoning delay. When an illiterate farmer made delay in filing the appeal by being misled with respect to the date of hearing his/her case, it should be excused.

- (f) When a person bonafide thinking that it was the proper course filed a suit instead of appealing from a decree
- (g) Where an appellant preferred an appeal to a wrong Court, believing bonafide that the appeal there, the appellant is entitled to deduct the time during which the appeal was pending in the wrong Court.
- (h) Ignorance of the fact of the death of a party whose legal representative have to be brought on record constitutes a sufficient cause for excusing the delay in seeking to set aside abatement.
- (i) Delay in filing an appeal due to inability to get stamps was excusable.
- (j) Where the period of filing an appeal expired during the vacation, but the appeal was filed 7 days after the opening of the Court, and the delay was due to the fact that the Court fee paid on the application for the copy of the decree was deficient, but the appellant received the information of deficiency later and as soon as he knew it he took necessary steps in all haste, it was held that the delay should be condoned.
- (k) There is no general principle saving the party from all mistakes of its counsels. Mistaken advice given by a lawyer negligently and without due care is not sufficient cause for condonation of delay in filing appeal or application. But it is held by the Delhi High Court that the plaintiff can not be made to suffer because of the negligence of the lawyer when it is proved that he was diligently prosecuting the suit. So the delay was condoned.
- (l) Where the appeal is not presented in time owing to a deliberate fraud of the counsel's clerk, there is sufficient reason for an extension of time.
- (m) Delay due to non-supply of information to party by counsel in ex-parte decree is sufficient cause for condonation of delay.
- (n) Correspondence is not sufficient to condone delay.
- (o) A party which is negligent in complying with the order of the Court is not entitled to get condonation of delay in filing an appeal.

CESU has not clarified any one of the above grounds for condonation of delay.

9. In light of the above, the Commission is of the view that so many discussions between CESU & GRIDCO have been made till filing of the case and the matter has been going on within the knowledge of both the parties. Hence, it can not be said that there is bar of limitation in filing the case. As such the delay is condoned by the Commission.

10. In this context, an extract of the Commission order in Case No.62 of 2003 and Case No.74 of 2003 pertaining to year-end adjustment bill claim of GRIDCO on WESCO and NESCO is quoted below:

“6. After hearing both sides at length, on perusal of materials available on record, we find that petitioners have not mentioned the meeting held between GRIDCO and two DISTCOs on 12.07.2003 where the issue in question was debated. It is strange to note that no documentary evidence is forthcoming from the side of the respondent – GRIDCO to substantiate the same. On the other hand, the Bulk Supply Tariff order dt.19.01.2002 has permitted an amount of Rs.108.25 crores in respect of revenue requirement for the year 2001-02. Such claim has been admitted basing on the submission made by GRIDCO in its tariff application before the Commission. As observed in para 6.23.1.2 of the tariff order dt.19.04.2002 “this has necessitated drawl from costlier central power station involving additional expenditure, which has been estimated at Rs.60.13 crore on the quantum of energy approved for the 2001-02 applying the approved rate of OERC. The Commission considers it reasonable to accept this figure as a pass through for the revenue requirement for the year 2001-02. However, the actual figure will have to be verified by the appropriate authority during the course of auditing.” GRIDCO has not submitted any audited account relating to additional sum actually spent for meeting the power requirement of the distribution companies in excess of what has been permitted by the Commission and has also not spelt out the reduction in cost of power purchase due to export of power outside the State. The claim of GRIDCO need to be scrutinised in view of a pass through already permitted by the Commission. As such, the claim raised on the petitioners – licensees are not being allowed.

Hence it is ordered:

Both the cases are allowed on contest. The claim raised by GRIDCO i.e. adjustment of bill amount of Rs.10,97,59,531/- as against WESCO and Rs.8.36,87,765/- against NESCO are hereby quashed. GRIDCO, if after audit satisfies that additional expenditure was incurred for meeting the power purchase requirement of the DISTCOs during the year 2000-01, in addition to that what has been permitted by the Commission in the tariff order dated 19.04.2002, such claim will be taken into consideration as pass through in subsequent years of revenue requirement. ”

11. The Commission in Case No.6 of 2006 pertaining to year-end adjustment bill claim of GRIDCO on SOUTHCO observed as follows:

“However, GRIDCO has not responded in their pleadings to the above observations of the Commission, though the case is similar in character. As such, the order passed by the Commission in the above mentioned cases will be mutatis mutandis applicable to the instant case.”

12. In view of the above facts, the Commission is of the opinion that since the case of CESU is similar in nature, the order passed by the Commission in Case No.62 & 74 of 2003 and Case No.6 of 2006 will be mutatis and mutandis applicable to the instant case. As such the claim of year end adjustment for the year 2000-01 by GRIDCO on CESU for Rs.12,80,14,659/- towards cost of overdrawal of power is not allowed and accordingly follow-up action is to be taken by GRIDCO in their account.
13. Accordingly, the case is disposed of.

Sd/-
(K.C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson