

ORISSA ELECTRICITY REGULATORY COMMISSION

BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

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

Case No. 113 of 2009
(Arising out of Case No.115 of 2004)

In the matter of : An application under section 94(f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulation, 2004 for review of the order dtd.01.12.2008 passed by OERC in Case No.115 of 2004.

(1) Central Electricity Supply Utility of Orissa (CESU) **Petitioner**

- Vrs. -

(1) Grid Corporation of Orissa Ltd. (GRIDCO), Janpath, Bhubaneswar.

(2) Government of Orissa, Dept. of Energy, Bhubaneswar

.... **Respondents**

For the Petitioner : Sri Harichandra Sahoo, DGM (Law) &
Sri B.K. Nayak, Counsel

For the Respondents : Sri R.C. Mishra, Sr. G.M.(F), GRIDCO & Sri
L.N. Mohapatra, Counsel for GRIDCO
Sri S.C. Mohanty, Law Officer, DoE, GoO

Date of Hearing : 26.10.2009

Date of Order : 26.10.2009

ORDER

The Commission had passed order dtd.01.12.2008 in Case No.115 of 2004 on the approved Business Plan of WESCO, NESCO, SOUTHCO & CESU for the control period from FY 2003-04 to 2007-08. The said order depicted the

total securitized amounts as on 31.03.2005 to be paid to GRIDCO by the four DISCOMs viz. WESCO, NESCO, SOUTHCO & CESU. The said order was sequel to the Business Plan order dtd.01.03.2005 and clarificatory order dtd.20.07.2006.

2. In the securitization order dtd.01.12.2008, Commission observed the following in para 20 to 25:

“20. *The total securitization amount as on 31.03.2005 is depicted as under: -*

Rs. in Crore

A. Loan Balance	WESCO	NESCO	SOUTHCO	CESU
<i>Principal</i>	<i>138.46</i>	<i>94.64</i>	<i>134.36</i>	<i>307.61</i>
<i>Interest</i>	<i>60.31</i>	<i>41.05</i>	<i>58.43</i>	<i>162.86</i>
<i>Sub-total (A)</i>	<i>198.77</i>	<i>135.69</i>	<i>192.79</i>	<i>470.47</i>
B. Outstanding BST dues with DPS				
<i>Opening balance as on 01.04.99</i>	<i>46.18</i>	<i>41.66</i>	<i>26.50</i>	<i>80.16</i>
<i>Arrear from 01.04.99 to 31.03.05</i>	<i>118.41</i>	<i>194.83</i>	<i>47.19</i>	<i>605.20</i>
<i>DPS on above</i>	<i>58.72</i>	<i>87.20</i>	<i>32.02</i>	<i>526.41</i>
<i>Sub-total (B)</i>	<i>223.31</i>	<i>323.69</i>	<i>105.71</i>	<i>1211.77</i>
Grand Total (A+B)	422.08	459.38	298.50	1682.24

21. *The principal and interest on loan outstanding as on 31st March, 2005 have been reconciled between WESCO, NESCO & SOUTHCO. But reconciliation statement between GRIDCO and CESU is yet to be finalized.*
22. *In absence of the reconciliation between CESU & GRIDCO as stated in above para, Commission accepts the audited figure of GRIDCO provisionally, till the final reconciliation.*
23. *In line with our order dtd.20.07.2006, the Commission directs that the DISTCOs shall pay the outstanding loans including interest alongwith securitized BST dues as on 31.03.2005 in 120 monthly installment (maximum) within 2015-16.*
24. *The security mechanism for payment of the amount shall be through escrow.*
25. *The distribution companies are directed to pay the current BSP and transmission charges at the first instance. The Commission also desires that DISCOMs should*

meet their normal salary, Repair & Maintenance expenditure as per the approved figure of the Tariff Order applicable from time to time. Besides above the DISCOMs must generate enough cash to pay towards the monthly installment of the securitized amount to GRIDCO failing which DPS as applicable will be levied”.

3. As per the above securitization order the securitized amount is divided into two components:
 - A. Loan Balance which includes principal and interest.
 - B. Outstanding BST dues with DPS.

As mentioned in the securitization order quoted above, the reconciliation of figures on the loan balance has not been done between GRIDCO and CESU. As regards the outstanding BST dues including DPS, there was no dispute between GRIDCO and CESU on the opening balance as on 01.04.1999, arrear from 01.04.1999 to 31.03.2005 and DPS as on 31.03.2005 i.e. Rs.80.16 cr., Rs.605.20 cr. and Rs.526.41 cr. respectively as per joint reconciliation statement between GRIDCO and CESU in presence of OERC officers. The DPS on such arrears is Rs.526.41 which CESU is now contesting as not payable raising certain grounds in the present petition.

The securitization order was passed by the Commission on 01.12.2008 and the review petition was required to be filed by 01.03.2009 within the mandatory period of 90 days. The CESU has now filed this review petition after delay of 164 days which they pray to be condoned. CESU has stated in their application that delay was not intentional and if the securitization order is implemented, it would unduly affect the interest of the consumers. CESU in its prayer in addition to the condonation of delay has also prayed to review the order dtd.01.12.2008 and waive out the DPS amounting to Rs.526.41 cr.

4. The learned counsel of GRIDCO, Sri L. N. Mohapatra stated that they received the copy of the review petition by CESU barely two days back and therefore, could not file any written argument to counter the petition. Sri Mohapatra argued that CESU must explain as to how and why such delay has accrued with reasons. The said delay may not be intentional but is the case of negligence.

Government of Orissa represented by Law Officer, Sri S.C. Mohanty endorsed the views of GRIDCO in this regard.

5. Commission's observation and directions

Commission heard both the parties in the matter and on perusal of records in the matter we find that the Commission's order dtd.01.12.2008 in the matter of clarification to the supplementary order dtd.20.07.2006 of the Commission passed in Case No.115 of 2004 pertaining to the approved Business Plan of WESCO, NESCO, SOUTHCO & CESU, has no drawback, mistake or an error apparent on the face of the record, which would attract review of the aforesaid order. In order to have sufficient basis for review of an order, following grounds needs to be satisfied.

- i. There has to be discovery of new or important facts or evidence
- ii. The error has to be apparent and not to be detected by a process of reasoning
- iii. The review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

6. The grounds of prayer in the review petition have been extensively dealt in the Commission's order dated 1.12.2008 in question and the present review petition do not satisfy any of the above conditions.

7. The review petition is not in conformity with the Hon'ble Supreme Court's order in case of Parison Devi and others Vrs. Sumitri Devi and others. The relevant extract of such judgement is quoted below: -

Under Order 47 Rule 1 CPC a Judgment may be open to review inter-alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule-1 of CPC, 1908. In exercise of the jurisdiction under Order 47 Rule-1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

8. Even though sufficient and convincing reasons has not been advanced for justifying the delay of 164 days, the Commission is unable to convince itself to admit the petition for review on its merit in the instant case in view of the principles enunciated by the Apex court for admitting review petition as explained in para 5 and 7.
9. Again without going into the merits of the case regarding waiver of DPS, we find that the amount securitized as on 31.03.2005 due for payment by CESU to GRIDCO was Rs.1682.24 cr. which was to be paid in 120 monthly installments as per order dtd.20.07.2006. Out of Rs.1682.24 cr. the arrear BST was Rs.685.36 cr. including the opening balance of Rs.80.16 cr. CESU has paid Rs.130.75 cr. upto 31.03.2009 and Rs.42.70 crores during FY 2009-10 upto 25.10.2009. Hence, CESU is yet to pay Rs.85.53 cr. towards the defaulted installment of FY 2008-09 and Rs.108.30 crores towards the approved amount for FY 2009-10. CESU must take concerted steps to pay at least Rs.236.53 cr. (defaulted amount of Rs.85.53 cr. for FY 2008-09 + Rs.151 cr. for FY 2009-10) during FY 2009-10 towards installment for FY 2008-09 and FY 2009-10. The issue regarding the payment of DPS or waiver of DPS, as raised in this petition would subsequently be addressed in the ARR of 2010-11, the petition for which may be filed along with the application for the ARR of 2010-11. Pending a final decision regarding payment of DPS, the amount so far paid or to be paid hereafter would be adjusted against outstanding BST amount of Rs.685.36 cr. and no payment is to be adjusted against DPS until full arrear BST of Rs.685.36 cr. is recovered or until further orders in the matter whichever is earlier.
10. With these observations, the review petition is not admitted and accordingly the case is disposed of.

(B.K. MISRA)
MEMBER

(K. C. BADU)
MEMBER

(B. K. DAS)
CHAIRPERSON