

# **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. Misra, Member

## **Case No.61/2009**

M/s Jindal Stainless Ltd.  
Vrs.  
GRIDCO

.... **Petitioner**

.... **Respondent**

**In the matter of: Review of the order of OERC dated 28.02.2009 in  
Case No.7 of 2009.**

**Date of hearing : 07.05.2009**

**Date of Order : 15.05.2009**

## **ORDER**

Mr. Aditya N. Das, Advocate for the petitioner, and Mr. A.C. Mallick, Director (Commercial), GRIDCO are present.

2. Mr. Das, Advocate stated that this is a case arising out of interim order dated 28.02.2009 of the Commission. The petitioner-M/s JSL Ltd. prays for the review of the above order of the Commission under Regulation 70 of the OERC (Conduct of Business) Regulations, 2004. The petitioner submitted that the interim order passed by the Commission is inconsistent with order dated 14.03.2008 on CGP Pricing Policy of the Commission. As per the order dated 14.03.2008, CGPs should be paid the cost of generation plus 10% of the said for procurement of power by DISTCOs/GRIDCO. In deviation from the order dated 14.03.2008 the Commission has fixed a price in its interim order on 28.02.2009. He further submitted that the order dated 28.02.2009 is not sustainable under law as the order dated 14.03.2008 was by the three member bench and the order passed a three member bench cannot be superceded by an order of a bench consisting of two members. He, therefore submitted that there is an error apparent on the face of the record and hence the order dated 28.02.2009 be rescinded. He prayed the Commission to admit the case and direct GRIDCO to file its reply.
3. Mr. A.C. Mallick, Director (Commercial), GRIDCO submitted that the argument of M/s JSL is not legally tenable as the interim order dated 28.02.2009 had been issued after hearing parties including CCPPO in which M/s JSL is a member. He further state that though the petition

filed by GRIDCO on 28.01.2009 mentions as “An application under clause 12.12 and 12.16 of OERC order dated 14.03.2008 regarding Comprehensive Pricing Policy for sale of surplus power from Captive Generating Plants”, the said petitioner elaborates the circumstances under which GRIDCO was unable to procure the surplus power of the CGPs to meet the power deficit situation faced by the State. He drew the attention of the Commission to the specific prayer made in the petition and clarified that nowhere GRIDCO has made specific request to review the order dated 14.03.2008 in the Case No.72 of 2007. The extract of the prayer made in the petition filed on 28.01.2009 is given below for ready reference.

*“In view of the facts and circumstances submitted herein above, GRIDCO prays that the Hon’ble Commission be pleased to consider the following issues in favour of the petitioner for the interest of the State consumers.*

- 1. To approve the procurement from CGPs other than specified in the ARR including the rate of such procurement, as the power so procured was used to meet the demand of the State.*
- 2. To allow the cost of such procurement as pass through in determination of BSP.*
- 3. As the CGPs may not be in a position to specify/commit the period of supply, there should not be any limit in period of power supply based on which the power injected by CGPs should be considered as “firm” power supply. So the definition of firm/non-firm power as stipulated in OERC Pricing Policy may be reconsidered. Scheduled power injected by CGPs may be considered as firm power.*
- 4. Different rates may give wrong signal to the CGPs and may be demotivating to the CGPs generating at lower cost. Thus, one or two rates may be considered with quantum of power as the incentive factor.*
- 5. The Hon’ble Commission may fix up a price for procurement of firm power from different CGPs for state consumption keeping in mind the average retail tariff for power intensive industries (298.05 paise/unit for EHT and 308.68 paise/unit for HT) as the prices quoted by CGPs are quite high i.e. Rs.3.85/unit to Rs.5.68/unit.*
- 6. A decision on procurement of surplus power from CGPs (NALCO & IMFA) having subsisting agreement with GRIDCO may also be taken.*
- 7. As the CGPs are given the facilities like land at concessional rate, water supply and other benefits by the State for setting up of industries, the Hon’ble Commission may decide and finalise a suitable price for procurement of surplus firm power of CGPs so that maximum power can be harnessed from CGPs.”*

4. Shri Mallick stated that the Commission after hearing the individual CGPs and Secretary, Confederation of Captive Power Plants. OPTCL, GRIDCO etc. have passed a separate common interim order on 28.02.2009. The circumstances and the urgency of such an interim

order have been elaborately discussed in the said order and the salient points of the said order have been summarized in para-16 thereof. Further, the Commission in para 17 of their order have reemphasized and reiterated that *"this is a common interim order and the arrangement suggested in Para 16 is an interim implementation plan and would be operative from 01.3.2009. After 30.6.2009 the Commission would review this arrangement as envisaged in Para 12.28 of the CGP pricing policy announced by the Commission in their order dated 14.3.2008"*. Shri Mallick, therefore, submitted that in view of the specific order and clarification recorded in para-17 of the order dated 28.02.2009 raking of the issue at a later date not only suffers from legal infirmities but also lacks substance. However, Shri Mallick prayed the Commission to allow some time file its counter reply and requested the Commission not to admit the case.

5. The petitioner has filed an application for review under Regulation 70 of OERC (Conduct of Business) Regulations, 2004. The ground mentioned by the petitioner therein is that there is an error apparent in the order dt.28.02.2009 inasmuch as this order is in violation of Commission's own CGP Pricing Policy recorded in its order dt.14.03.2008 wherein the Commission has laid down a reasonable formula whereby the interest of the CGPs and GRIDCO and hence, the State have been fairly balanced. As per the said order, the CGPs should be paid the maximum cost of generation along with 10% thereof. However, the Commission has fixed a cost of Rs.3.00 per KWh. At the end, the petitioner has prayed as follows:
  - (a) to modify the order dt.28.02.2009 passed by the Commission in Case No.7 of 2009 and direct GRIDCO to pay the cost of generation of JSL plus 10% of the said cost;
  - (b) or in the alternate, allow JSL to sell the surplus power from its CGP to buyers outside the State in case GRIDCO is not ready and willing to pay at a rate equal to the actual cost of generation of JSL plus 10% margin as provided in Commission's order dt.14.03.2008 on pricing of surplus power from CGPs;
  - (c) pass such other order/s as may be deemed just and proper in the facts and circumstances of the case.
6. Thus, from the prayer of the petitioner, it is evident that there is no error apparent on the record which would justify to review of the order dt.28.02.2009. The Hon'ble Supreme Court in case of Parsion Devi and others V. Sumitri Devi and others decided on October 14, 1997 has held that mistake or error on the face of the record is one which is self-evident and does not require a process of reasoning – Distinct from "erroneous decision" – So rehearing the matter for detecting an error in the earlier decision and then correcting the same do not fall within the ambit of a review jurisdiction – Review jurisdiction cannot be used as appellate jurisdiction."

7. In view of the aforesaid decision of the Apex Court, the case of the petitioner does not come under review as the petitioner himself has prayed to modify the order dt.28.02.2009 by fixing higher pricing of the surplus power of the CGP. This is not an error apparent on the face of the record. As submitted by the respondent, the order dt.28.02.2009 is a separate order by the Commission and is not a review of the order dt.14.03.2008. On the other hand, the Commission itself has indicated in para 17 of their order dt.28.02.2009 that the Commission would review the arrangement as envisaged in para 12.28 of the CGP pricing policy announced by the Commission in their order dt.14.03.2008. Hence, the ground mentioned by the petition are not sufficient to review the order dt.28.02.2009 but as indicated by the Commission itself, they would like to review the said order after 30.06.2009.
8. However, since GRIDCO has prayed for one month time to file its counter-reply, the same is allowed. GRIDCO is directed to file its counter reply before 10.06.2009 serving a copy thereof on the petitioner. The counter of GRIDCO be put up to the Commission to take up the review of the interim order dt.28.02.2009 as stipulated in para 17 thereof.
9. Accordingly, the matter is disposed of.

**(B.K. Misra)**  
**Member**

**(K.C. Badu)**  
**Member**

**(B.K. Das)**  
**Chairperson**