

ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present : Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case No.65/2009

M/s. Shyam Cold Storage	Petitioner
Vrs.		
EE, SED & CEO, WESCO	Respondents

For Petitioner	-	Mr. R.P. Mahapatra, authorised representative
For Respondents	-	Mr. Banoj Kumar Pattanaik , Advocate

Date of Hearing: 08.06.2009

Date of Order: 08.06.2009

ORDER

This Case is filed under Section 142 of the Electricity Act, 2003 by M/s Shyam Cold Storage, Baraipalli, Sambalpur against the Distribution Licensee- WESCO for non implementation of GRF, Burla common Order dtd. 20.10.2008 passed in Case No. 39 to 41 of 2008.

2. Shri R.P. Mohapatra the authorised representative of petitioner argued to take action on the licensee u/s 142 and stated the following points in support of his contentions.
 - (i) The Hon'ble Commission in its RST order dated 20.3.2008 for the FY 2008-09 determined the tariff for Agro-Industrial consumers, which include Cold Storages.
 - (ii) The Respondents in letter No. 839 dated 14.07.2008 to the Hon'ble GRF, Burla stated that Review Petition has been filed before the Hon'ble Commission and they will do the needful after receipt of necessary directions from the Hon'ble Commission.
 - (iii) In Order dated 12.08.2008 the Hon'ble Commission did not admit the Review Petition No. 44 of 2008 filed by the Respondent, to review amongst others the tariff for Agro-industrial consumers. This fact was never brought to the notice of the Hon'ble Grievance Redressal Forum, Burla by the Respondent.

- (iv) That in Order dated 20.10.2008 the GRF, Burla directed the Respondents to issue revised bills w.e.f. 1st April, 2008 as Agro-industrial tariff is applicable to Cold Storages.
 - (v) The prayer of the Respondent in Misc. Case No. 14717/08 to stay the operation of the Order dated 20.10.2008 of the Hon'ble GRF was not accepted by the Hon'ble High Court, Orissa in its Order No.3 dated 16.12.2008. However, the Court directed that the bills raised in the meanwhile would be subject to result of the Writ Petition.
 - (vi) The respondent is guilty of hiding facts and willfully avoiding to implement the orders of GRF.
3. Mr. Banoj Pattnaik, Advocate for respondents stated that the WESCO had challenge the order of the GRF, Burla dtd. 20.10.2008 and the Hon'ble High Court has disposed the matter. In compliance to the direction of the Hon'ble Court, the WESCO has filed application before this Commission which has been registered as Case Nos. 39 to 41 of 2009. The Commission has heard the matter and the orders are reserved. He further stated that there is no willful disobedience for implementation of the GRF, Burla order as the issue was sub-judice before the Hon'ble High Court, and at present, the Commission is yet to pass a final order on the matter. As such at present Sec. 142 is not maintainable.
4. Heard the petitioner, respondents, perused the case records and other relevant papers. Before we proceed to go into the details on the facts of the case, it would be appropriate to extract the provision of the Sec. 142 of the Electricity Act, 2003 and Regulation 3(11) of OERC (Grievance Redressal Forum and Ombudsman) Regulations, 2004. which are reproduced below:

Section 142 of the Electricity Act, 2003

"In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction"

Clause 3 (11) of OERC (Grievance Redressal Forum and Ombudsman) Regulations, 2004

“The Licensee shall duly implement the decisions and orders of the Forum made in favour of the complainant.”

The main purpose of present proceeding under Sec. 142 is to punish the respondents-WESCO for non-implementation of GRF, Burla order dtd. 20.10.2008.

5. The brief facts of the case is that the petitioner had approached GRF, Burla for re-classification of his consumer category and to pay the tariff as applicable (Agro Industrial Consumer) Category. The GRF, Burla heard the petitioners complaint (Case 39/2008) alongwith two similar nature of cases (Case 40 & 41 of 2008) and passed the common order on 20.10.2008 in favour of the petitioner. Again the petitioner had filed a petition before the said GRF for implementation of its above order and the said GRF vide its order dtd. 31.01.2009 passed in case No. 168 of 2008 disposed the matter observing the Commission may do the needful.

Being aggrieved by the above mentioned decision by the GRF, Burla, dtd. 20.10.2008 the WESCO had filed Writ Petitions before the Hon'ble High Court, Orissa. The Hon'ble High Courts vide its Order dtd. 03.02.2009 passed in WP(C) Nos. 16092/08, 17006/08 and 16726/08 and 17304/08 has disposed the matter directing as follows

xxxxxxxxxxxxxxxxxxxxxxxxxxxx

3. Mr. pattnaik has raised several points so also learned counsel appearing for Op. party No. 2. But then all the submissions raised are technical in nature and also involve several disputed questions of fact with regard to use of electricity supplied and the nature of the unit. Thus the same cannot be effectually adjudicated under Writ jurisdiction.

4. In view of the aforesaid facts, and as agreed to by parties, this Court disposes of the Writ petition directing the petitioner to approach the OERC within four weeks hence. If an application is filed the said Commission shall take a decision as to under which tariff category, Op. party No.2-unit shall be placed. It is needless to say that the orders passed by the GRF in the aforesaid cases would be subject to result of the decision to be taken by the OERC. Before taking any decision the OERC shall also give an opportunity of hearing to Op. No.2 – unit.

In the another similar type of case the WESCO has preferred another Writ before the Hon'ble High Court (WP (C) No. 16016/08), E.E., RED, WESCO Vrs Lingaraj Feeds Ltd., Rourkela) and the Hon'ble Court had disposed the matter on 03.02.2009 with the same observations as mentioned above.

6. In the meantime the GRF Rourkela in case No.55 of 2008 in case of Shree Lingaraj Feeds Ltd., Kachery Road, Rourkeal Vrs. Executive Engineer

(Elect., Rajgangpur Electrical Division and others in their Order dt.12.09.08 have ordered that the petitioner, Shree Lingaraj Feeds Ltd., Kachery Road, Rourkeal is an agro based industry and squarely fall under paragraph 442 of the OERC order dt.20.3.08 and Opposite Party No.1 i.e. Executive Engineer (Elec.) Rajgangpur Electrical Division is to raise the bill as that of irrigation category i.e. Sl. No.13 in Annexure-I of Tariff Order. As petitioner has already paid the bill for the month of April 2008 in the general category. the Opposite Party NO. 1 is to revise the bill and to adjust the excess amount under Regulation 92(1) of the OERC Distribution (CS) Code, 2004.

Against the aforesaid order of the GRF Rourkela, the WESCO authorities have approached the Hon'ble High Court in Writ Petition No.WP(c) No.16016 of 2008. The Hon'ble High Court has directed the Petitioner WESCO to approach the OERC.

7. Compliance to the aforesaid order of the Hon'ble High WESCO has filed petitions before the Commission Case Nos.38, 39, 40, 41 & 42 2009. The issue involved in all the above cases are same, the Commission heard them together on 15.05.2009 and final order is reserved. Mean while the Hon'ble High Court vide its order dtd. 21.05.2009 passed in WP (C) No. 16016/08 (Mis. Case No. 6106 of 2009) has stayed further, proceeding in case No. 42 of 2009 pending before this Commission.

As the proceeding in OERC in Case No.42 of 2009 has been stayed by Hon'ble High Court. Commission cannot also pass final order in Case No.38, 39, 40, 41, 42 of 2009 regarding applicability of Agro Industrial tariff to Cold Storage, Poultry Feed, Cattle Feed, Cattle & Poultry Feed Supplement and Animal Feed.

8. The petitioner has alleged that the respondents review application (for RST FY 2008-09) was rejected by the Commission (Case No. 42/08. But this argument of the petitioner does not substantiate his allegation as the Commission in its said order dtd. 12.08.2008 has not passed any opinion about the applicability of 'agro industrial consumer' category to the cold storage.
9. Under the facts and circumstances of the case the Commission is of the opinion that there was reasonable and sufficient ground on the part of the Respondents not to implement the order dt.20.10.2008 of the GRF, Burla. The Hon'ble High Court in their order dt.16.12.2008 of course has not granted stay of the operation of the order dt.20.10.2008 but has clearly directed that the bills raised in the meanwhile would be subject to the result of the Writ petition. The extract of the order dated 16.12.2008 of the Hon'ble Court is stated below.

"This Court is not inclined to stay operation of the order dtd. 20.10.2008, but then directs that the bills raised in the meanwhile would be subject to result of the writ petition."

Since bills raised by the respondent is based on the tariff applicable to industrial consumers as usual practice and the matter was sub-judice there is no violation of the order dt.20.10.2008 of GRF, Burla. When the matter was pending for adjudication by the Hon'ble High Court and right from the beginning the respondent has been raising objections regarding the applicability of Retail tariff for Agro Industrial consumers to the Cold Storage and after hearing the petitioner as well as the respondent, the Hon'ble High Court in their order dt.3.2.2009 have directed OERC to take a decision as it invokes many issues and disputes of technical nature. The Commission in its RST tariff order for FY 2009-10 (at para 252) has clarified the scope and ambit of Agro Industrial Consumers Category. Hence, it appears that there is no willful negligence on the part of the respondents for not carrying out the order of GRF Burla dt.20.10.2008.

10. We further direct that subject to outcome of the decisions in the Case Nos. 38, 39, 40, 41 & 42 of 2009 the Petitioner would continue to pay the electricity dues as per bills raised by the Respondents. If there is any difficulty in paying the pending dues at a time the Petitioner would pay 50% of the bills raised up to 31.5.2009 and the balance 50% may be paid in five equal installments along with current monthly bills starting from June, 2009.
11. The case is accordingly disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C.Badu)
Member