

# **ORISSA ELECTRICITY REGULATORY COMMISSION**

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

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

## **Case No.70/2009**

M/s Rawmet Ferrous Industries Ltd.	....	<b>Petitioner</b>
- Vrs. -		
CEO, CESU	....	<b>Respondent</b>

**In the matter of: U/s 142 of the Electricity Act, 2003.**

For the petitioner	:	Mr. R.P. Mahapatra, authorized representative
For the Respondents	:	Mr. K.V. Durga Prasad, CCO and Mr. S.K. Harichandan, Manager (Law)

**Date of Hearing: 22.06.2009**

**Date of Order: 15.07.2009**

## **ORDER**

Mr. Mahapatra stated that the petitioner has filed this application u/s 142 of Electricity Act, 2003 before the Commission with prayer to impose the maximum penalty of Rs.1lakh on the respondent for contravention of the Regulations relating reduction of contract demand particularly with reference to Regulation 71 of the OERC Distribution (Conditions of Supply) Code, 2004 and in case of continuous failure additional penalty up to Rs.6000/- for each day of default may be imposed.

2. Mr. Mahapatra also stated that as per letter dated 29.11.2008 necessary clarification regarding alteration of electrical installation and letter of approval of the Electrical Inspector was furnished and was also intimated that there is no provision of submission of Form-II in the OERC Distribution Code for reduction contract demand. He also stated that Regulation 69 of the OERC Distribution (Conditions of Supply) Code, 2004 is not

applicable for reduction contract demand. He further stated as per letter dtd. 27.02.2009 of the respondent, the petitioner was permitted for reduction of Contract Demand from 33,335 KVA to 27, 500 KVA w.e.f 01.02.2009. In its letter the respondent stated that the petitioner has availed higher than the requested demand up to Oct, 2008. Observing lower drawal by the consumer from Nov, 2008 to Jan, 2009, which is within the requested load, the petitioner contract demand was allowed to be reduced w.e.f. 01.02.2009. The petitioner, however, argued that the action of the respondent to allow reduction of contract demand from 01.02.2009 instead of 1.12.2008 is a gross contravention of the regulations framed by this Commission.

3. Mr. Drugaprasad stated that if the petitioner is aggrieved with the action of the licensee for not allowing him reduction of contract demand then he should approach before the GRF in accordance with the procedure laid down in the OERC (GRF & Ombudsman) Regulation, 2004 which has been established under Sec. 42 of the Electricity Act, 2003. He also stated that if any provisions of Electricity Act, 2003 or Rules, Regulations made there under is violated or any direction issued by Commission is violated, then a complaint can be filed before the Commission u/s 142 of the Act. From reading of the entire application of the petitioner as whole, it would be clear that for disallowing the application for reduction of contract demand w.e.f. 01.12.2008 and instead of allowing w.e.f. 01.02.2009, the petitioner has approached this Commission which is pre-mature and on this ground the present petition should be dismissed. The petitioner without exhausting the remedy available under Electricity Act, 2003 has approached the Commission straightway. If this petition is to be treated exclusively an application under Sec. 142 of the Electricity Act, 2003, and only for the purpose of claiming compensation for alleged violation of Regulation 66 to 71 of the OERC Distribution (Conditions of Supply) Code, 2004, then the question as to whether the petitioner is to be allowed reduction of contract demand w.e.f. 01.12.2008 as has been averred can not be adjudicated. The only limited question that has to be adjudicated by this Commission is as to whether the respondent has violated aforesaid Regulations or not.

4. He further stated that before going to the point as to whether, the respondent has violated Regulations 66 to 71 of OERC Distribution (Conditions of Supply) Code, 2004 or not it is very much pertinent to mention here that, as per the law of interpretation, while giving interpretation to a particular provision of statute, it has to be given plain reading only. Nothing should be presumed or no extraneous meaning which is not available in plain reading should be given to that particular provision. In favour of his argument the respondent cited the judgment of the Hon'ble Supreme Court in reported case in AIR 1975 SC, page-915 which have held that when a power is given to do a certain thing in certain way, the things must be done in that way or not at all and other methods of performance are necessarily forbidden. The law of equity and conscience demands that, whoever would approach the court for justice and for certain relief, has to approach in a clean hand. Here the petitioner as explained above has not approached this Commission in clean hand, therefore, the present application of the petitioner may be rejected with cost for filing of such vexatious claims.

5. Now let us examine the statutory provision regarding reduction of contract demand which are as follows:

Regulation 66 (1) of the OERC Distribution (Conditions of Supply) Code says that the application for reduction of contract demand should be made to the designated authority of the licensee. Regulation 68 says that the application should be accompanied by processing fee, test report from the license contractor (wherever alternation of installation is involved), meter reading of the previous three months and letter of approval of electrical Inspector wherever applicable. Regulation 69 says that the contract demand can not be reduced if such reduction would cause the investment to the non-remunerative. Regulation 70 says that the licensee has to decide within 90 days of receipt of complete application for reduction of contract demand. Any rejection should be recorded with reasons. Regulation 71 says that the effective date of reduction should be from the first date of the month following which the application in complete respect was received by the engineer.

6. In the instant case, the licensee received the application on 15.11.2008 for reduction of contract demand from 33,335 KVA to 27,550 KVA. But the application did not contain the documents of the meter reading of the previous three months. Hence, it is quite clear that the application for reduction of contract demand was not complete in all respect as

stipulated under Regulation 68 of the OERC Distribution (Conditions of Supply) Code, 2004. The petitioner has argued that the meter reading for the previous three months was known to the licensee, this argument does not appear to hold good so far as making the application complete in all respects because as indicated in para-4, when power is given to do certain things in a certain way, the things must be done in that way, here the application was not accompanied with meter reading of the previous three months, no matter it may be available with the concerned officials of the licensee.

7. The licensee should have rejected outright such application on the ground of lapses as stated above. However, the licensee has not done so and have apparently asked the petitioner to submit some more records which appears to be irrelevant in this case. However, the licensee has observed that the reading of the previous three months i.e. August to October, 2008 were more than 27,500 KVA and on finding the reading for the subsequent consecutive three months i.e. November,08 – January, 09 to be less than 27,500 KVA, did allow reduction of contract demand with effect from 01.02.2009. When it was found out by the licensee that the reading of the previous three months were more than the reduced demand asked for, it was not justified to reduce the demand from 01.12.2008. It was proper on the part of the licensee to study the consumption during December, 2008 to January, 2009 and rightly allowed the reduction in the contract w.e.f. 01.02.2009.
8. After hearing the parties and perusal of the case records, we observed that the licensee has not violated the provisions of the OERC Distribution (Conditions of Supply) Code, 2004 because the application for reduction of contract demand was not made in complete respect and thus the Commission is of the opinion that penalty under section 142 of the Electricity Act, 2003 is not applicable in this case.
9. Accordingly, the matter is disposed of.

Sd/-  
**(B.K. Misra)**  
**Member**

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