

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.72/2009

M/s Hind Metals & Industries (P) Ltd.	Petitioner
Vrs.		
CEO, CESU & Another	Respondents

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, 20003 before the Commission with prayer to impose the maximum penalty of Rs.1 lakh 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) Regulations, 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 the application was made 31.10.2008 for reduction of contract demand to 9000 KVA from 15000KVA under Regulation 66(2) of the OERC Distribution (Conditions Supply) Code, 2004. As per letter dated 06.11.2008 necessary clarification was furnished by the petitioner and the respondent was requested to communicate orders for reduction of contract demand from 1.11.2008 in accordance with

Regulation 71 of the Distribution Code. As per letter dtd. 27.12.2008 of the Sr. G.M. (Comm) of the licensee intimating that the application for reduction of contract demand from 15MVA to 9MVA has been rejected 'as the status of maximum demand from July to Sept., 2008 was on higher side'

3. He further stated that as per Regulation 68(3) of the OERC Distribution (conditions of Supply) Code, 2004 every application for reduction of C.D. should be accompanied by the meter readings of previous three months. The basic concept/ reason for inclusion of this clause in the regulation is that, the actual energy/ demand drawn by the consumer during the minimum three month's period preceding the date of application must be below the CD for which the application for reduction of CD has been applied for and that will be guiding factor in taking decision, by the authority whether the consumer has actually reduced his demand or not and accordingly the permission for reduction of C.D. can be accorded. It is also required for safeguarding the supply system of the respondents.
4. He also stated that as per Regulation 70 of the OERC Distribution Code, 2004 the application made for reduction of CD shall be disposed of within 90 days. Here in this case the respondent took the decision to reject the application of the petitioner for reduction of CD on 27.12.2008, when the period of only 57 days had elapsed from the date of application i.e., 31.10.2008. When the decision regarding the date from which the reduction of CD is to be effected was dependent on the maximum demand for month of Dec, 2008, the action of the respondent not to observe the same after five days is against the principles of nature justice and equity. The respondent has not only contravened the Regulations framed the Commission relating to reduction of CD particularly Regulations 71 of the Distribution Code but has also discriminated between consumers which contravenes the principles of nature justice and equity.
5. 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 have approached 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

the reading of the entire application of the petitioner, it would be clear that for disallowing the application for reduction of contract demand, the petitioner has approached this Commission which is pre-mature one and on this ground the present petition should be dismissed as the petitioner without exhausting the remedy available under Electricity Act, 2003 approached the Commission straight way. 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 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.

6. 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 in a 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 a clean hand, therefore, the present application of the petitioner may be rejected with cost for filing of such vexatious claims.

7. Now let us examine the statutory provision as regarding to reduction of contract demand which is 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 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.

8. In the instant case, the licensee received the application on 31.10.2008 for reduction of contract demand from 15 MVA to 9 MVA with effect from 01.11.2008. In this case the licensee has pointed out that the maximum demand for the preceding three months, i.e. July to September, 2008 is more than 9 MVA. Hence, the licensee has rejected the application for reduction of contract demand. The petitioner has stated that there is no provision in the OERC Distribution (Conditions of Supply) Code, 2004 that the reduction of contract demand can be disallowed on the ground that the meter reading for the previous three months is higher than the applied value. However, the spirit of Regulation 68 (3) says that the licensee should make the judgment on the reduction of the contract demand based on the metering reading of the previous three months. When the meter readings for the previous three months have been found to be more than 9 MVA, the licensee does not appear to have erred in its judgment by rejecting the application for reduction of contract demand.
9. After hearing the parties and perusal of the case records, we observe that the licensee has apparently not violated the provisions of the OERC Distribution (Conditions of Supply) Code, 2004 and thus the Commission is of the opinion that penalty under section 142 of the Electricity Act, 2003 is not applicable in this case.
10. Accordingly the case is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member