

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. 49/2011

M/s. JSL Stainless Ltd.
Vrs.
GRIDCO & Ors.

.... Petitioner

..... Respondents

In the matter of : Under Sec. 86(1) (f) of the Electricity Act, 2003 for adjudication of the disputes regarding status of CGP for payment of arrear dues by GRIDCO & exemption of ED by the Govt.

For Petitioner : Shri L. Pangari, Advocate and Shri Rajdeep Mohanty, Resident Director, M/s. JSL Stainless Ltd.

For Respondents : Shri B.K. Nayak, Advocate and Shri S K Mohanty, Manager, GRIDCO. Nobody is present on behalf of DoE, Govt. of Orissa

ORDER

Date of Hearing: 17.09.2011

Date of Order: 23.09.2011

1. Shri L. Pangari, Advocate on behalf of M/s JSL Stainless Ltd., (M/s JSL) submitted that it has an integrated Stainless Steel Plant at Kalinga Nagar, Duburi with its own CGPs of the capacity of 2x125 MW. CERC in its order 02.02.2009 had allowed the petitioner to wheel 75 MW of power for the captive use of the petitioner in his another plant at Hisar. In the year 2009-10 the state of Orissa faced serious crises of power due to hydrology failure and brake-down of some dedicated Thermal Units. The Govt. of Orissa challenged the said order of CERC in the Hon'ble High Court of Orissa in W.P.(C) No4454 of 2009 and as per the order dated 21.05.2009 of the Hon'ble High Court and with the direction of State Govt. under Sec. 11 of the Electricity Act, 2003 the open access proposal was discontinued and M/s JSL supplied power to GRIDCO - the State Designated Agency (SDA) for use inside the State. M/s JSL again moved the Hon'ble High Court after a meeting under the Chairmanship of Secretary, Energy, Govt. of Orissa with different stakeholders was conducted to resolve the issue as per the earlier direction of the High Court. Thereafter, Hon'ble High Court of Orissa in their Order 28.10.2009 allowed M/s. JSL to supply 30 MW power to its sister plant at Hisar through Open Access.

2. The State Commission in their Order dtd. 28.02.2009 in case No. 6/2009 to 20/2009 directed that a remunerative price fixed by the Commission in the said Order would be applicable for CGP power drawal by GRIDCO w.e.f. 01.03.2009. The Commission reviewed the said Order on 28.10.2009 in Case No. 6/2009 and fixed another set of prices of CGP power drawal by GRIDCO w.e.f. 01.11.2009 considering the rise in fuel cost to tide over the deficit situation prevailing in the year 2009-10. Similarly the Commission reviewed the CGP pricing due to change the scenario and in their Order dtd. 23.11.2010 in Case No. 117, 118 of 2010 fixed another set of prices for CGP drawal by GRIDCO w.e.f. 10.11.2010. The Commission in the same Order clarified that for FY 2010-11 if any CGP fails to maintain CGP status verified at the end of the year, then payment would be made at the rate equal to the weighted average power purchase cost of ER NTPC power including CTU transmission loss and the rate fixed by the Commission for CGP drawal time to time whichever is less.
3. The Learned Counsel for M/s JSL submitted that due to prohibition for allowing Open Access to M/s JSL by Hon'ble High Court in Case No. in WP(C) No. 4454/2009 as stated above, all the surplus power generated by M/s JSL after consumption in its Kalinganagar Plant was supplied to GRIDCO during the year 2009-10 and 2010-11. Eventually the self consumption of M/s JSL decreased beyond 51% and it lost its CGP status. Consequent upon losing its CGP status GRIDCO withheld its payment as per CGP pricing fixed by the Commission from time to time.
4. The Learned Counsel for M/s. JSL further submitted that if the petitioner would have been allowed to consume 75 MW of power at its Hisar Plant, then percentage of total consumption would have been more than 51% of total Generation and the CGP of M/s JSL would not have lost its status. The situation was beyond the control of the petitioner as it was prevented to consume 51% of power generated in its plant during the relevant period. In this regard, M/s JSL has written letter to the CMD, GRIDCO on 16.04.2010 and to the Commissioner-Cum-Secretary, DOE, Govt. of Orissa on 11.06.2010. In the Lr. dtd. 16.04.2010 addressed to CMD, GRIDCO by name, the JSL had among things brought out as to how it was being forced to inject maximum power to the Grid, the relevant extract of the said Lr. Dtd. 16.04.2010 is given below:

“We would like to put forward the following on record under which circumstances JSL was forced to inject maximum power to the State Grid.

- (i) *The demand from GRIDCO verbally as well as officially through letter time to time to maximize the generation to State Grid.*

Inspite of CERC Order dtd. 02.02.2009, JSL Ltd. Duburi was not allowed open access for 75 MW power which is under sub-judice in Orissa State High Court because of which JSL is forced to supply its entire power to State.

- (ii) *Implementation of Section 11 of Electricity Act, 2003 by the Government of Orissa was forced from April 2009 of 31st July 2009. Even before imposition of Section 11, Government had intimated us to maximize our generation and supply to the State for the interest of public since March, 2009 till date, considering the demand of the State. Accordingly, we have tried our level best for helping the State Government by maximizing our generation.”*

Similarly JSL in their letter dtd.11.06.2010 addressed to the Commissioner-Cum-Secretary, Energy Department has brought out their apprehension to attain 51% of consumption criteria in maintaining the CGP status during the current year (2010-11).

The said letter is extracted below:

“To

*The Commissioner-cum-Secretary
Department of Energy,
Govt. of Orissa, Bhubaneswar*

Sub: Maximizing supply of power to the State Grid from our 250 MW CPP at KNIC, Jajpur..

*Ref: Our earlier Lr. No. JSL/B/GOVT/6015 dtd. 10th November, 2009;
JSL/B/GOVT/6015 DTD. 23RD December and several meetings thereon*

Dear Sir,

The above mentioned subject matter may kindly be referred and also be noted that during the last financial year i.e. 2009-10, JSL was the largest supplier of power to Orissa Grid among all CPP's in the State during the year 2009-10 and till date. On the request of the State Government to overcome the power crisis in the State and for steady power supply to the consumer during the summers JSL was requested to increase their generation and export.

This is being brought to your kind notice that due to the above reasons, we apprehended that we may be unable to attain 51% consumption criteria in maintaining the CGP status for the current year, provided we continue to supply power at this quantum. In event of this, JSL may have to pay the electricity duty charges for the current financial year which we had been exempted for 5 years.

In this aspect, we request the State Government to give necessary directives for further course of action at our end.

Submitted for your kind consideration and necessary direction please.

Thanking You

*Your's faithfully
For JSL Ltd.”*

Copy of the letter was not marked either to GRIDCO, the purchaser of power nor to the Commission. Whether response, if any, received from the State Govt. by M/s JSL on the above letter was not submitted by the petitioner.

5. Shri B.K.Nayak, Advocate on behalf of GRIDCO submitted that in the year 2009-10 GRIDCO faced power crises and Govt. of Orissa issued directions to all CGPs under Section 11 of the Electricity Act, 2003 to optimize their generation and inject power to the State grid. However, the Govt. of Orissa in the said letter dated 22.04.2009 has asked the CGPs that “to generate power at its full exportable capacity/PLF and inject power so generated to the State grid after their captive consumption to enable the State Govt. to tide over the situation”. The implementation of Sec.11 of the Electricity Act prohibiting out of state supply was for the limited period only from April, 2009 to 31st July, 2009 of the FY 2009-10. There is no such restriction for the financial year 2010-11. Further, GRIDCO had never requested any industry to inject surplus power from its CGP shutting down their own Industrial unit nor to maintain their captive consumption or not to maintain their respective CGP status for the corresponding year.
6. He, further submitted that the petitioner fully aware of the benefit available to its Industrial units from the Govt. of Orissa in maintaining the CGP status of the captive generator of the Industrial unit. Regarding the issue of Open Access permission for 75 MW of power the Govt. of Orissa had filed appeal before Hon’ble High Court in view of the MOU signed between the petitioners with GoO and it has no relevance to the present case.
7. In the meantime GRIDCO has already paid for its CGP power procured from M/s.JSL at ceiling price fixed by the Commission up to November, 2010. However, for the month of December, 2010 there was a provisional payment of 60% against the monthly bill raised by the CGP. The CGP of the petitioner has lost its status for FY 2009-10 & 2010-11 due to non-consideration of its surplus injection to GRIDCO due to direction of State Govt. in this regard. The Commission in its order dated 23.11.2010 in Case No.117 & 118 of 2010 (GRIDCO Vrs. CCPPO) directed that for FY 2010-11 any CGP fails to maintain CGP status verified at the end of the year, payment would be made at the rate equal to the weighted average cost of ER NTPC power plus CTU transmission loss and CGP price fixed by the Commission whichever is less. Accordingly the bills of the CGP had been recasted and it was found that by the end of FY 2010-11 huge amount are due to GRIDCO from the petitioner.

8. Now, M/s JSL has submitted before the Commission that the power supplied to GRIDCO at the instances of the State Govt. be treated as its own consumption and arrear dues of the petitioner should be paid expeditiously.
9. Heard the parties at length. The main issues in this case are
 - (i) Who is to determine the CGP status of any power plant supplying surplus power to the State Grid?
 - (ii) What should be the price of power injected to the State Grid at different point of time and scenario?
10. Let us answer the first question. Appellate Tribunal in Appeal No. 116 of 2009 and IA No. 218 and 219 of 2009 of Chhattisgarh State Power Distribution Co. Ltd. Vrs. Hira Ferro Alloys Ltd & another has held that the State Commission have the jurisdiction to declare the Captive Generating Plant and Captive Consumer Status in the respective State. We have also clarified the matter in our Order dtd. 23.11.2010 in Case Nos. 117 & 118 of 2010. Therefore, no doubt, we are competent enough to decide the CGP status of any power plant within the State of Odisha.
11. The second question can be answered in the following ways. In view of our Order dtd. dtd. 28.02.2009 read with review Order dtd. 28.10.2009, Order dtd. 20.03.2010 (BSP Order of GRIDCO) and subsequent Order dtd. 31.05.2010 in Case No. 48 & 49 /2010, any CGP irrespective of their maintaining CGP status shall be paid as per CGP price fixed for the year 2009-10. In fact in our interim order No.3 of the present petition (Date of hearing 08.09.2011 and Date of order 13.09.2011), we had already given our clear order that for the FY 2009-10 all the surplus power purchased by GRIDCO shall be paid to M/s JSL at CGP price. However, in Case of M/s Jindal Stainless Ltd. the payment is to be regulated as per the Order dtd. 05.05.2010 of Hon'ble High Court of Orissa in Case No. WP(C) No. 4454 of 2009.
12. The next part of second question is whether M/s Jindal Stainless Ltd. is a CGP during FY 2010-11 which the Commission shall decide as per the data submitted by the Petitioner. Here the question arises whether M/s Jindal Stainless Ltd. has been prohibited by Govt. or GRIDCO to utilize its power generated in Kalinganagar Plant through Open Access in its sister plant in Hisar to which the Kalinganagar Power Plant is captive. Hon'ble High Court of Orissa in their Order 28.10.2009 allowed M/s. JSL to supply 30 MW power to its sister plant at Hisar through Open Access. M/s JSL contends that had this 30 MW of power as directed by the Hon'ble High Court of Orissa would have been wheeled to Hisar Plant of M/s JSL, then their position of

Captive consumption could have been more than 51% of the net generation of its generating plant satisfying CGP status.

(In MU)

| Gross Generation | Auxiliary Consumption | Net Generation | Captive Consumption at Kalinganagar + wheeling to Hisar Plant | Captive consumption w.r.t net Generation (%) | Sale of power to GRIDCO | Sale of power to GRIDCO w.r.t net generation (%) |
|-------------------------|------------------------------|-----------------------|--|---|--------------------------------|---|
| 1468.270 | 134.256 | 1334.014 | 680.452 | 51.01 | 653.562 | 48.99 |

13. Form the above table, it is clear that the captive consumption is more than 51% and, therefore, the power plant at Kalinganagar is eligible for CGP status. But from the data submitted by M/s JSL before us it is quite clear that no open access transaction has taken place during FY 2010-11. No power has been wheeled from the CGP at Kalinganagar to its Hisar Plant through the open access transaction although as per the Order of Hon'ble High Court of Orissa dtd. 28.10.2009 M/s JSL was eligible to supply power up to 30 MW to its sister plant at Hisar during FY 2010-11. The table below depicts the actual transaction of power by CGP of M/s JSL during FY 2010-11.

(In MU)

| Gross Generation | Auxiliary Consumption | Net Generation | Captive Consumption at Kalinganagar | Captive consumption w.r.t net Generation (%) | Sale of power to GRIDCO | Sale of power to GRIDCO w.r.t net generation (%) |
|-------------------------|------------------------------|-----------------------|--|---|--------------------------------|---|
| 1468.270 | 134.256 | 1334.014 | 417.652 | 31.31 | 916.362 | 68.69 |

14. From the table above it can be concluded that M/s JSL has lost its CGP status by consuming less than 51% of power for its own use during FY 2010-11 although it was eligible to supply 30 MW power to its sister plant at Hisar. This has happened due to the insistence of GRIDCO from time to time to maximize the power injection to the State Grid, despite its need to transfer power to the tune of 75 MW through Open Access for its own captive use at Hisar. Similarly, implementation of Section 11 of Electricity Act, 2003 by the State Government has prevented M/s JSL from April, 2009 to 31st July, 2009 to resort to open access. From the submission made in para 4 above and the circumstances under which the petitioner was prevented from maintaining the CGP status as analyzed in para 12, the Commission is of the opinion that there were some compelling circumstances beyond the control of the petitioner to maintain the CGP status by consuming 51% of its generation for the year 2010-11. We, therefore, direct that the petitioner be paid at the CGP rate approved by the Commission from time to time for supply of surplus power from its captive generating plant during 2010-11. Accordingly, the balance amount due to the

petitioner for 2009-10 and 2010-11 be paid in accordance with the stipulations contained in Para 36 (4) of the Order dtd. 29.08.2011 in Case No. 22 of 2011. This Order is also subject to the final outcome in the Hon'ble High Court of Orissa in WP (C) No 4454 of 2009. The Commission has also received a petition from M/s NESCO, WESCO & SOUTHCO (DISCOMs of the State) regarding the treatment of the generators which have not maintained their status as CGP and selling more than 49% of their total generation to GRIDCO/outside (Case No.129/2010). The Commission in their interim order (Date of hearing 30.08.2011 and Date of order dt.14.09.2011), considering that the matter involves a policy issue affecting the captive industries as a whole, has impleaded CESU (other DISCOM), CCPPO, Govt. of Orissa and GRIDCO as respondents. The issues raised therein will be addressed separately.

15. Accordingly, the case is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson