

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012
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Present : Shri S. P. Nanda, Chairperson
Shri K. C. Badu, Member
Shri B. K. Misra, Member

Case No. 53 of 2011

M/s Bhushan Power and Steel Ltd. Petitioner

- Vrs. -

GRIDCO & Others Respondents

In the matter of: An application under Section 86 (1) (f) of Electricity Act, 2003 read with Chapter II, Regulations 8, 9 & 10 of the Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, challenging the illegal action of GRIDCO in not releasing the differential payment towards sale of surplus power by the applicant for the period from 01.01.2007 to 26.02.2007.

Persons present: -

For Petitioner : Shri A K Parija, Sr. Advocate and Mr. P P Mohanty,
Advocate.
For Respondents : Sri Ranjit Das, Sr. GM (PP), GRIDCO
Nobody is present on behalf of M/s.OPTCL

ORDER

Date of Hearing : 08.02.2012

Date of Order :29.03.2012

The Learned Counsel for Bhushan Power & Steel Ltd. (BPSL) stated that the Commission vide its order dated 27.02.2004 had allowed M/s BPSL for sale of surplus power of its CGP outside the state of Odisha and M/s BPSL was selling the surplus power to ASEB & APCC through M/s Reliance Energy Trading Ltd.. But on 27.12.2006 Southern Regional Load Despatch Centre refused to give permission for open access of power as no consent was received from ERLDC due to no consent from SLDC & OPTCL.

2. Thereafter, Sr. GM (PP), GRIDCO vide its letter dated 28.12.2006 expressed its willingness to purchase the surplus power from the CGP of M/s BPSL as per the Terms & Conditions of MOU signed with GOO and at a rate of Rs. 2.02/Kwh or at a rate to be determined by OERC from 01.01.2007 onwards. M/s BPSL after necessary discussion with GRIDCO started selling the surplus power from its CGP with effect from 01.01.2007. In response the applicant company in its letter dated 30.12.2006 has intimated to Sr. GM (PP) GRIDCO, that the company has entered into a contract for sale of power with ASEB and APPCC through Reliance Trading Ltd. and the company will be put into huge financial loss in case of sale of power to GRIDCO @ Rs. 2.02 /Kwh which is much below the contractual price and the prevailing market rate and also the rate at which the power sold by them is ranging from Rs. 3.50 to Rs. 4.80. In this letter they have asked GRIDCO for detailed discussion on the proposal of GRIDCO.
3. In the mean time M/s BPSL, after discussion with GRIDCO on the graded rate of Rs.2.02 / Rs.2.30 / Rs.2.50 per Kwh towards sale of surplus power, started selling power to GRIDCO with effect from 01.01.2007. Thereafter, the Director (Com.) GRIDCO vide its letter dated 22.01.2007 intimated the applicant company that pending approval of rate and completion of other formalities, Bhushan is requested to schedule power for sale to GRIDCO and payment will be released at a provisional rate of Rs.2.02/Kwh. After a rate is decided, the differential payment over & above Rs. 2.02 /Kwh, if any shall be made.
4. The Board of Directors of the GRIDCO on its 105th meeting held on 27.02.2007 approved the graded rates as under:

(I)	Upto 8 MU/ Month	- Rs. 2.02/Kwh
(II)	8 MU and above/ Month	- Rs.2.30/Kwh
(III)	32 MU and above /Month	- Rs.2.50/Kwh

Again the Board of Directors of GRIDCO on its 107th meeting held on 26.05.2007 decided that the graded rates as approved in the 105th Board meeting held on 27.02.2007 for procurement of surplus power would be applicable with effect from 27.02.2007 for all CGPs including M/s.BPSL (except NALCO & ICCL).

5. Thereafter, Sr. GM (PP) GRIDCO intimated the applicant company to revise the energy bill from 27.02.2007 as per the GRIDCO's Board decision. Accordingly the applicant company revised the energy bills for the period from 27.02.2007 to 31.05.2007 and at the same time the applicant company requested GRIDCO to revise the effective date of applicability of the graded rates from 01.01.2007 i.e from the date of supply of power to GRIDCO. However, GRIDCO released the payment for the period from 27.02.2007 to 31.05.2007 but did not pay the differential amount towards supply of surplus power at the above graded rate for the period from 01.01.2007 to 26.02.2007 over and above the rate of Rs. 2.02/ Kwh.
6. In spite of several reminders to the top officials of GRIDCO, no reply has been received by the applicant company in respect of withholding the differential amount of Rs.2,74,60,853.00 towards supply of surplus power at a graded rate from 01.01.2007 to 26.02.2007 over and above the rate of Rs. 2.02/Kwh.
7. Based on the letters and discussions with the Sr. GM (PP) and the Director (Com), GRIDCO, the applicant company has supplied power to GRIDCO with effect from 01.01.2007. Therefore, the applicant company had requested the Commission to direct GRIDCO to pay the differential amount of Rs. 2,74,60,853.00 towards supply of surplus power from 01.01.2007 to 26.02.2007 over and above the rate of Rs. 2.02/Kwh to the applicant company along with DPS .
8. The Commission in its order dated 29.08.2011 has indicated as under:-

“We are not giving any direction in the matter as the issue was not brought to the Commission for concurrence/approval of rate revision by the Board of Directors of GRIDCO but expect good sense to prevail. We, therefore, suggest and opine that matter be resolved amicably by the parties as per the agreement and commitments on either side. The parties must settle the issue amicably and expeditiously and submit the status to the Commission by 05.9.2011.”
9. Further the Commission in its order dated 08.09.2011 has directed GRIDCO to intimate a suitable date to the petitioner for an amicable settlement of the issue as had been directed in the interim order dtd 29.08.2011 and the parties may submit the outcome of the discussion by way of affidavit before 17.09.2011 positively.

10. As per the above direction of the Commission there was meeting between GRIDCO and M/s BPSL on 09.09.2011. In this meeting Director Commercial GRIDCO expressed his inability to accept the effective date as 01.01.2007 since the grade rate along with its effectiveness was decided by GRIDCO's Board of Directors. Hence, no final settlement could be arrived.
11. The Commission in its order dated 22.11.2011 directed GRIDCO to take up the matter with their Board for an amicable settlement and submit the decision of the Board before this Commission at the earliest. Thereafter, the Board of Directors of GRIDCO in their meeting on 02.12.2011 has turned down the request of Applicant Company regarding payment at a higher rate for the supply of its surplus power during the period from 01.01.2007 to 26.02.2007, as all CPPs supplying power to the Board has to be dealt equally, M/s BPSL cannot claim any special staytus compared to other CPPs.
12. The applicant has prayed the Commission to pass a suitable order/direction, directing GRIDCO to pay the withheld amount of Rs..2,74,60,853.00 towards differential amount for supply of power from 01.01.2007 to 26.02.2007 as per their commitment made vide their letter dated 22.01.2007.
13. The representative of GRIDCO submitted as per the direction of the Commission that the matter was placed before the GRIDCO's Board and the Board in its 141st meeting held on 02.12.2011 has turned down the request of M/s. Bhushan Power and Steel Ltd. regarding payment at a higher rate for the surplus power supplied by it to GRIDCO during the period from 01.01.2007 to 26.02.2007, on the ground that the same will create disparity among other CGPs supplying surplus power to GRIDCO.
14. Heard the parties at length.
15. In our earlier interim orders, we had noted that the point of difference between the parties relates to the effective date of application of the revised rate? While M/s. BPSL claiming that the effective date of revised rate should have been 01.01.2007 i.e. from the date of scheduling based on the letters dtd.28.12.2006 and dtd.22.01.2007 and discussions made by them with GRIDCO, GRIDCO released the revised graded rate from 27.02.2007 as per the decision taken in 105th & 107th meeting of the Board of Directors of GRIDCO held on 27.2.2007. The extracts of the relevant correspondence and proceedings of the meetings of Board of Directors are reproduced below:-

- (i) The extract of the letter dt.28.12.2006 of GRIDCO to M/s.BPSL:

“GRIDCO is willing to purchase surplus power from the CPP of Bhushan Power & Steel Ltd.(BPSL) as per the terms and conditions of the MoU signed with the Govt. of Orissa. It is willing to purchase such power at a rate of Rs.2.02/unit or at a rate to be determined by OERC from 1st January 2007 onwards. You are requested to confirm your willingness for the same. Your kind co-operation in the matter is requested.”

- (ii) Letter dated 30.12.2006 of M/s Bhushan Power & Steel Ltd (BPSL) :

“XXXX In this regard, it is to inform you that after obtaining permission from OERC and complying with all necessary formalities, we started sale of power w.e.f. 28.8.2005. Currently we have entered into a contract for the sale of power with ASEB and APPCC through Reliance Energy Trading Ltd. Otherwise also the rate offered by you is much lower than the prevailing rate in the market and also the rate at which the power sold by us which is ranging from Rs.3.50 to Rs.4.80 as per the table given hereunder.

Buyer	Month	Rate Per Unit	
		Off Peak	Peak
APPCC	January 2007	4.40	4.80
ASEB	January 2007	3.50	4.60
ASEB	February & March 2007	4.20	4.60

The company will be put into huge financial losses running into crores of rupees in case of sale of power to you at Rs.2.02 which is much below the contractual price and prevailing market rate. The rate offered by you is also without any terms and conditions.

As on date we are committed/tied up for sale of surplus power with inbuilt penalty clause, at a competitive market price. Any deviation/default in meeting the contractual obligation shall seriously jeopardize the project viability including loss of revenue. In addition the market credentials will be adversely affected, besides, payment of heavy compensation to the buyers of power.

In view of the facts mentioned above, since we are already tied up with different buyers at a much higher prices with inbuilt penalty clauses we would fervently pray before your good office to direct SLDC to grant consent for short term open access on the applications from January to March, 2007. And we are agree gable to have a detailed discussion on your proposal for purchase of our surplus power, if any subject to compatible market prices and terms therein for which a suitable date may please be communicated.”

- (iii) The extract of the letter dt.22.01.2007 of GRIDCO to M/s.BPSL is given hereunder:

“In inviting a reference to the letter cited above, it is to intimate that GRIDCO is agreeable to purchase the surplus power from your CPP at Jharsuguda. Pending approval of rate and completion of other formalities, Bhushan is requested to schedule power for sale to Gridco and payment will be released at a provisional rate of Rs.2.02 per unit. After a rate is decided, the differential payment over and above Rs.2.02, if any shall be made. You are also requested to enter into an agreement with Gridco for such transaction.”

(iv) Extract of 105th Board meeting held on 27.02.2007

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After deliberation, the Board agreed to the following graded rates which may be offered to the CPPs to maximize the drawal subject to the approval of OERC, if required:

- | | | |
|-------------|---|----------------------|
| <i>i)</i> | <i>Upto 8 MU per month</i> | <i>Rs.2.02 p/kwh</i> |
| <i>ii)</i> | <i>8 MU and above per month</i> | <i>Rs.2.30 p/kwh</i> |
| | <i>(about 10 MW or above on an average per day)</i> | |
| <i>iii)</i> | <i>32 MU and above per month</i> | <i>Rs.2.50 p/kwh</i> |
| | <i>(about 40 MW or above on an average per day)</i> | |

(v) Extract of 107th Board meeting held on 26.5.2007

“Item 20 : Purchase of Surplus Power from CPPs.

The Board perused the memorandum and after discussion decided that the graded rates for procurement of surplus power from CGPs including M/s. Bhushan Power & Steels Ltd. (except NALCO & ICCL) as approved in the 105th Board meeting held on 27.02.2007 would be applicable w.e.f.27.02.2007 being the date of the Board meeting and authorized CMD to settle the bills accordingly. The approved graded rates shall be valid till 31.03.2008.”

16. In the interim order dated 22.11.2011 we had directed GRIDCO to take up the matter with Board for an amicable settlement and submit the decision of the Board to this Commission. But it is observed that no settlement could be reached and GRIDCO's Board in its 141st meeting held on 02.12.2011 turned down the request of M/s BPSL regarding payment towards its surplus power at the higher rate for the period from 01.01.2007 to 26.02.2007 with the ground that the same will create disparities among other CGPs than supplying power to GRIDCO.

17. The issue of determination of rate of sale of surplus power of CGPs to GRIDCO was not brought to the Commission in the year 2006/2007 either by any of the CGPs including M/s BSPL or GRIDCO. The rate is being fixed by GRIDCO Management from time to time and the willing CGPs are supplying their surplus power to GRIDCO at the offered rate of GRIDCO. The issue of either determination of power purchase rate of CGP or the issue of eligibility criteria of CGP status were not brought for the Commission's approval either by GRIDCO or any CGP in the year 2006/2007. We have noted the argument of GRIDCO that whatever purchase rate is fixed it was applicable to all CGPs at that time. It would not be equitable to discriminate one CGP with others agreeing with them earlier effective date of the higher rate. While agreeing with the contention of 'principle of equity', we, however, express our displeasure that M/s GRIDCO should have more open and transparent in their communication to M/s BPSL (GRIDCO's letter dt.22.01.2007) and could have avoided giving any false hope to M/s BPSL that they will be treated differently than other CGPs, who were already supplying power to GRIDCO prior to January, 2007.
18. With the above observation, we invited further comments/submission, if any, from the parties. GRIDCO reiterated that it is not possible for them to treat M/s BPSL separately than other CGPs supplying power to GRIDCO at that time. The effective date of enhanced rate i.e. 27.02.2007 was made applicable to all CGPs including M/s BPSL.
19. Accordingly, the case is disposed of.

Sd/-
Member(M)

Sd/-
Member(B)

Sd/-
Chairperson