

**ORISSA ELECTRICITY REGULATORY COMMISSION**  
**BIDYUT NIYAMAK BHAWAN**  
**UNIT-VIII, BHUBANESWAR - 751 012**  
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Present : Shri B.K. Das, Chairperson  
Shri K.C. Badu, Member  
Shri B.K. Misra, Member

Case No.61/2011

M/s East Coast Railways	.	....	Petitioner
Vrs.			
CESU & Anr.		.....	Respondents

In the matter of: Review and amendment of the directions issued by the Commission Ltr. No. DIR(T)-335/08/1266 dated. 18.06.11 under Regulation 70 & 77 of the OERC (C of B) Regulations, 2004.

For the Petitioner : Shri R.P. Mahapatra, Authorized representative.

For the Respondents : Sri Debaranjan Ray, Advocate

**ORDER**

**Hearing date: 06.09.2011**

**Order date: 28.09.2011**

The petitioner East Coast Railways has filed the present petition under Regulation 70 & 77 of the OERC (Conduct of Business) Regulation 2004 for review/amendment of the direction issued by the Commission vide letter No. DIR(T)-335/08/1266 dt. 18.06.2011. Sri R. P. Mahapatra, the authorized representative of the petitioner submitted that he has specifically sought for the review/amendment of the clarification made by the Commission in the above letter with regard to the metering arrangement for Railways (132KV Traction). He further submitted that the billing which is being made by CESU on the basis the apex meter installed at OPTCL sub-station and not at consumer premises is wrong and illegal and against the Electricity Act, 2003 and the Regulations framed there under. The billing is required to be made only on the basis of the consumer meter and not otherwise. Therefore, the case

may be admitted by the Commission and the clarification issued in the letter dated 18.6.2011 needs to be reviewed/amended.

2. Sri D.R. Ray, learned counsel appearing on behalf of the respondent submitted that this clarification dated 18.6.2011 has been made in fact, for all the EHT consumers which also include the present petitioner. Therefore, it cannot be said that the clarification of the Commission is with respect to the petitioner only. He further submitted that, the letter dated 18.6.2011 is strictly not an order of the commission but the same is only an extract of the order dated 18.3.2011 passed by the Commission while disposing the ARR and RST cases of all the 4 DISCOMS namely CESU, NESCO, WESCO and SOTHCO in Case No 146,147, 148 and 149 of 2010. The present case is neither covered under Regulation 70 nor Regulation 77 of the OERC (Conduct of Business) Regulation 2004. He further submitted that, if the petitioner is aggrieved by the order dated 18.3.2011 of the Commission, he had two options available with him. One is to file review within 90 days from the date of the order as provided under Regulation 70, of the OERC (Conduct of Business) Regulation 2004 and the other one is to file appeal under section 111 of the Electricity Act, 2003. In the instant case, after the order is passed, in absence of the pre-requisites those are required for review, the Commission need not reopen the same and decide the matter afresh. Therefore, there is nothing new to be determined in the present review petition and accordingly it is not to be admitted.
3. We have heard the parties and gone through their both written and oral submissions. For the purpose of convenience, we quote the Regulation 70(1) and 77 of the OERC (Conduct of Business) Regulation 2004 which reads as follows:-

**“70. Review of the decisions ,directions, and orders:-**

- 1) The Commission may on its own motion, or on the application of any of the person or parties concerned, within 90 days of making of any decision, direction or order, review such decision, direction or order and pass such appropriate order as the Commission thinks fit.”

**“77. General power to amend:-**

The Commission may, at any time amend any defect or error in any proceeding before it”

4. From a plain reading of the Regulation 70, it is clear that, review of a “clarification” is not covered under regulation 70. As per Regulation 77, only the Commission can make amendment to any defect or error in the proceeding before it. Under Regulation 77 no one is required to file an application before the commission as has been provided in Regulation 70.
5. The present application has been filed by the petitioner admittedly for review/amendment of the clarification of the letter dated 18.6.2011 under section 70 and 77 of the OERC (Conduct of Business) Regulation 2004. In view the provisions quoted above, the present application is neither coming within the purview of Regulation 70 nor Regulation 77 of the OERC (Conduct of Business) Regulation 2004.
6. Further , the clarification dated 18.6.2011 , is a clarification to the RST order dated 18.3.2011 of the Commission passed in Case No 146,147, 148 and 149 of 2010 for the FY 2011-2012.. The Commission in the clarification have dealt with Para 358-360 of the Tariff order dated 18.3.2011. The Para 358-360 cannot be treated as observation of the Commission. While Para358 and 359 are the views of the consumers and DSCOMS, the Commission in Para 360 has passed its order/direction.
7. The present petition in fact in disguise is intended to re-open the order dated 18.3.2011 passed in Case No 146,147, 148 and 149 of 2010. The order dated 18.3.2011 of the Commission was passed after a detail public hearing and after hearing all the stake holders. If the petitioner was aggrieved by the Retail Supply Tariff order dated 18.3.2011, he could have taken the recourse to the provisions as laid down under the Electricity Act 2003 which he has not done.
8. In view of the above discussions, we are not inclined to admit the present application and hence the same is rejected.
9. Accordingly, the case is disposed of.

Sd/-  
**Member (M)**

Sd/-  
**Member (B)**

