

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

Present : Shri S.P. Nanda, Chairperson
Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case No. 62/2011

M/s Pradhan Industries Ltd. Vrs. Executive Engineer. (Elect.), NESCO, Jajpur Road Electrical Division Jajpur Road.	Petitioner
	Respondent

In the matter of: Application under Sec. 142 of the Electricity Act, 2003.

For the Petitioner: Shri B.K. Nayak, Advocate.

For the Respondents: Shri Rajib Kumar Nayak, E.E, JRED, Jajpur Road, NESCO
and Sri S.C.Dash, Advocate.

ORDER

Date of Hearing: 08.11.2011

Date of Order: 14 .11.2011

1. M/s Pradhan Industries Ltd. through its Managing Director Shri Brahmananda Pradhan has filed the present application u/S 142 and 146 of the Electricity Act, 2003 (Act), before the Commission against the Executive Engineer (Electrical) Jajpur Road Electrical Division, NESCO with the following prayer:

- (i) To pass appropriate orders directing the Opp. Party to implement the order dated 27.07.2010 passed by the GRF, Jajpur in Consumer Complaint Case No. 165 of 2010 within a time frame,
- (ii) To direct the Opp. Party to refund the amount if the petitioner is entitled to get any amount from the Opp. Party with interest as provided in Regulation 92 (1) of the OERC Distribution (Conditions of Supply) Code, 2004 (Code) .

(iii) To pass appropriate orders in imposing penalty/compensation against the Opp. Party for non compliance of the order dated 27.07.2010 passed by the GRF, Jajpur in Consumer Complaint Case No. 165 of 2010.

2. The fact of the Case is that, the petitioner which is a Larger Industrial consumer has availed power supply at 33 KV from Jajpur Road Grid Sub-station for a Contract Demand of 3000 KVA and has also executed the agreement to that effect on 03.07.2007. The petitioner has contended that, though it has been stipulated under clause 13 (I) of the Code that, the licensee before extending power supply is required to examine whether the available system is technically feasible and remunerative as per the norms fixed, but in the instant case, the respondent has not calculated the remunerativeness for giving power supply. Instead the respondent for giving power supply had framed 3 numbers of estimates as follows:

A .Sanction Order No. 395 of 2007-08 for Rs 53,475/- for shifting of 11 KV line, 0.02 Km along with shifting of 100 KVA 100/0.4 KV Substation.

B. Sanction Order No. 339 of 2007-08 for Rs 4,80,518/- for construction of 0.3 KM 33 KV line and updating of conductor size 80 mm to 100 mm and road crossing one span with D.P.

C. Sanction Order No. 34 of 2009-10 for Rs 13,30,964/- for up-grading from 80 mm to 100 mm AAAC for 5.5 KM in the existing 33 KV Feeder”

3. The petitioner was asked to deposit the 6% supervision charge with NESCO and to take up the work by petitioner of its own. Against the estimate ‘A’ amounting to Rs 53,475/-, the entire work has been taken up by the petitioner by depositing the supervision charge and as against the estimated amount of Rs 13,30,960/- as mentioned at ‘C’ the petitioner deposited 6% supervision charges amounting to Rs 75,320/- .

4. When remunerative calculation was not made, the petitioner approached the GRF, Jajpur Road in Consumer Complaint No. 165 of 2010 challenging the Estimate ‘A’ & ‘C’ with a prayer for direction to the opposite party to make remunerative calculation and return back the amount, which, the petitioner has

spent against the estimate No. 'A' & 'C' and to return the supervision charge as against the Estimate No.'B'. On contest , the GRF by Order dated 27.07.2010, allowed the case of the petitioner and directed the opposite party to provide the remunerative calculation earlier made vide Estimate No. 395 of 07-08, 339 of 07-08 and 34 of 2009-10 and further also directed the respondent to take suitable action for sharing cost based upon the remunerative calculation.

5. Without making the remunerative calculation as per the direction of the GRF, the OP raised the energy bill, for the month of June and July, 2010 and the petitioner challenging the above two energy bills, approached the Hon'ble High Court of Orissa in W.P. (C) No. 12954 of 2010 and 14642 of 2010 respectively. The Hon'ble High Court vide its Order dated 03.08.2011 had directed the petitioner to approach before the OERC u/Ss. 142 and 146 of the Electricity Act, 2003 for redressal of his grievance and the OERC has also been directed to dispose of the petition of the petitioner within 3 months of filing of such petition. Accordingly the present petition has been filed by the petitioner.

6. The Respondent through its counsel, Sri S C Dash, Advocate filed its reply on 02.11.2011 and the same is taken on record. In his reply, the respondent has stated that the Case is not maintainable. He submitted that, as per the foot note of the Order of the GRF, the opposite party should have approached the Ombudsman, for implementation of the Order of GRF. Further, Section 142 of the Electricity Act, 2003 would be applicable only if the Order/award passed by the Ombudsman is violated. For violation of the Order of GRF, petition u/S 142 of the Act is not maintainable and for that, Regulation 17 of the OERC (GRF & Ombudsman) Regulation, 2004 can be relied upon. The Respondent has further contended in Para-7 of his reply that, the Order of GRF dated 27.07.2011 being a nullity in the eyes of law even if it is not implemented , it will not amount to violation .

7. Shri Nayak, learned counsel appearing on behalf of the petitioner submitted that, when, the GRF has adjudicated the dispute in presence of the parties to the satisfaction of the petitioner, he is not required to approach the Ombudsman again for implementation of the above order of GRF. He further submitted that, this present case is in the nature of an execution proceeding. When

the order of the GRF has not been challenged, the same is final and binding against the parties. At this stage the legality of the Order passed by the GRF cannot be questioned in the present case. The Hon'ble High Court with the consent of the parties, have directed the petitioner to file the present petition and therefore, the respondent at this stage, can not raise the question regarding legality of the Order of GRF and the maintainability of the present petition. He further submitted, that, when, the statute provides to do a particular thing in a particular manner, the same has to be done in that manner or not at all. Therefore, when Section 142 of the Electricity Act, 2003 provides for a such a remedy and the present petition has been filed for violation by the respondent, the provisions of the Regulation made by the Commission under the Electricity Act, 2003 and the same has been confirmed by the GRF, the present petition can not be said to be not maintainable.

8. The Executive Engineer. (Elect.), NESCO, Jajpur Road Electrical Division Jajpur Road, submitted that a Writ Petition has been filed by the Opposite Party before the Hon'ble High Court against the GRF Order dated 27.07.2011 in W.P.(C) No. 29408 of 2011 and the said case has been listed before the Hon'ble High Court and the Hon'ble High Court also by order dated 8.11.2011 has stayed the GRF Order. The opposite party filed a memo being signed by its Advocate on 08.11.2011 with an undertaking to file the certified copy of the order dated 8.11.2011 of the Hon'ble High Court. Shri Dash, learned Counsel, on 9.11.2011 filed the certified copy of order dated 08.11.2011 where in the order dated 27.7.2010 of the GRF has been stayed .

9. In view of the above stay order dated 08.11.2011 passed by the Hon' ble High Court, the Commission is not inclined to proceed further with the Case.

10. Accordingly, the case is disposed of.

Sd/-
(B.K.Misra)
Member

Sd/-
(K.C.Badu)
Member

Sd/-
(S.P.Nanda)
Chairperson