

**ORISSA 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. 72 of 2011**

M/s Raghunath Paper Mills (P). Ltd.& another.....	....	Petitioners
Vrs.		
NESCO & others	.....	Respondents

In the matter of: An application under Ss.146, 149 and 151 of the Electricity Act, 2003 read with corresponding OERC Distribution (Conditions of Supply) Code, 2004 for non-compliance of the Order dated 05.08.2010 of the Hon'ble High Court of Orissa passed in Company Petition No.25/ 2005 so also the Interim Order dated 13.05.2011 of the Hon'ble Apex Court in SLP (Civil) no.35573 of 2010.

For the Petitioner:	Shri. Tribhuwan Tiwari, Advocate Shri Ankit Agarwal (Director)
For the Respondents:	Shri Suresh Tripathy, Advocate, Niharika Pattnaik, DM (Legal), Shri S.C.Singh (Sr. GM), Shri N.K.Khuntia, AGM (Com. & RA), NESCO.

**ORDER**

**Date of Hearing: 22.10.2011**

**Date of Order: 11.11.2011**

1. The present petition has been filed by M/s Raghunath Paper Mills Pvt. Ltd. and Shri Ankit Agarwal as petitioners impleading North Eastern Electricity Supply Company of Orissa (NESCO) and 11 others, as respondents, with the prayer before the Commission to file complaint u/S. 151 of the Electricity Act, 2003

against the respondents, who have alleged to have committed offence under Section 146 read with Section 149 of the Electricity Act, 2003.

2. The brief fact of the case is that, one M/s Konark Paper and Industries Ltd. which was situated under the supply area of NESCO and also a consumer of NESCO, was liquidated by judgment dated 23.06.2006 of the Hon'ble High Court of Orissa in Company Petition No. 25/2005. In the said liquidation/winding up proceeding besides Orissa State Financial Corporation (OSFC), the distribution licensee-NESCO was one of the parties to the said liquidation/winding up proceeding as a claimant for supply of power to the industry. M/s Konark Paper and Industries Ltd. had submitted before the official liquidator, interalia, stating therein the details of debts and liabilities, which also include the arrear dues payable to NESCO for supply of electricity to the industry. Even though the same was within the knowledge of official liquidator who was appointed by the Hon'ble Court in Company Petition No. 25/2005 and the distribution licensee, but the same has not been disclosed either by the official liquidator or by NESCO, the licensee to the petitioner.
3. As per order of the Hon'ble High Court, the official liquidator took over the possession of all the assets and properties of M/s Konark Paper & Industries Ltd. on 20.12.2006, which was duly witnessed by the officials of NESCO, OSFC and the valuer. During the liquidation period, the power supply was disconnected by NESCO to M/s Konark Paper and Industries Ltd. and also electric poles, carrying supply lines were dismantled.
4. For sale of the assets and properties of M/s Konark Paper & Industries Ltd. the bidding process was initiated and the petitioner participated in the bidding process and was the highest bidder among all. The Clause (I) of the terms and conditions of sale was mentioned as follows:

“Clause(1) – The motto of the sale is strictly on “as is where is and whatever there is” basis and the purchaser will not be liable for payment of any dues related to the company (in liquidation) payable on or before the handing over of possession on pursuant to the confirmation of sale.”

5. The Hon'ble High Court confirmed sale of assets and properties of M/s Konark Paper and Industries Ltd. in favour of the petitioner being the highest bidder. The petitioner took over the possession of the assets and properties from the Official Liquidator on payment of entire sale consideration amount of Rs 3.43 Cr. The petitioner- Rghunath Paper Mills Pvt. Ltd. purchased the assets even without any knowledge in respect of any arrear dues, if any, outstanding of NESCO against M/s Konark Paper and Industries Ltd. towards energy charges.
6. The petitioner applied for 100 KW supply of electricity for construction purpose in the prescribed form and the same was allowed by NESCO vide its letter dated. 10.12.2008. As per demand of NESCO, the petitioner deposited Rs. 86,928/- towards 6% supervision charge, Rs.2,95,758.00 towards demand of 6% cubical metering charge and also Rs. 1,65,156.00 towards security deposit, with a total sum of Rs. 5,47,482.00 to NESCO and an agreement was also executed on 27.03.2009 between the petitioner and NESCO for providing new connection to the paper mill of the petitioner.
7. For availing new connection, though the petitioner had also installed two transformers by making further expenditure of Rs. 14 lakhs approximately along with Rs. 15,700/- towards inspection fee and drawing approval fee but NESCO did not supply construction power for 100 KW and remained silent.
8. As NESCO did not supply construction power, the petitioner having no alternative, completed the construction work by making expenditure by hiring diesel generating sets and made his unit functional / operational and again filed an application in form No. 21C (Annexure P/14) along with load details, requested NESCO to provide permanent power supply of 750 KVA as per the agreement. NESCO at this stage without giving power supply to the petitioner's unit, by letter dated 21.05.2010 asked the petitioner to deposit the arrear outstanding energy dues of Rs.79,02,262/- of M/s Konark Paper and Industries Ltd. to avail new supply connection. Being aggrieved by the inaction of NESCO in not providing supply power to the unit of the petitioner and challenging letter dtd. 21.5.2010 of NESCO, the petitioner filed a Writ Petition bearing No. W.P.(C) No. 9807 of 2010 before the Hon'ble High Court of Orissa against the Official Liquidator and

others. The Hon'ble High Court has disposed of the above Writ Petition vide its Order dated 05.08.2010 directing the opposite parties (herein respondents) to provide electricity to the petitioner's unit within a period of 7 days from the date of order and also quashed the Letter/Demand Notice dated. 21.05.2010. However the petitioner was directed to pay the current dues.

9. Without implementing the above direction of the Hon'ble High Court, NESCO filed an appeal bearing Writ Appeal No. 237/2010 before Division Bench of the said Hon'ble Court against the aforesaid order dated 5.8.2010, and the said Writ Appeal was also dismissed on 04.11.2010 by the Division Bench of the said Hon'ble Court with the observation that it is open to the appellants (herein respondents) to take such steps as may be just and proper in consonance with the law for realization of the arrears of electricity dues payable to it by the erstwhile company. They also observed that "we do not find any illegality or infirmity in the impugned judgment dated 5.8.2010 passed by the learned Single Judge warranting any interference in this appeal".
10. The respondents without implementing the above order of the Hon'ble High Court passed by the Single Judge Bench and the Division Bench, filed SLP (Civil) No. 35573/2010 before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its interim Order dated 13.05.2011 has directed as follows:

***"Subject to payment of Rs.40 lacs (Rupees forty lakhs) within 15 days, the electricity connection will be restored within a period of one week thereafter. This is without prejudice to the stand of both the parties. It is needless to mention that the consumption charges will be paid regularly. I.A. No. 2 is ordered accordingly."***
11. In consonance with the direction of the Hon'ble Supreme Court, the petitioner made payment of Rs. 40 lakhs on 27.05.2011 within the time given by the Hon'ble Apex Court. Though the petitioner has performed its part of the obligation, but the respondents having not performed their part performance have issued a letter insisting the petitioner to make other compliance, which was not in the Order of the Hon'ble Supreme Court.

12. After receipt of the notice from the Commission, the Executive Engineer (I/c) Basta Electrical Division has filed its reply on 15/10/2011 on behalf of the respondent's and the said reply objection dated 15.10.2011 is taken on record. He has also prayed the Commission that the Case filed by the petitioner is not maintainable and liable to be rejected.
13. Shri Tiwari, learned Advocate appearing on behalf of the petitioner submitted that, the present Case falls within the ambit of Section 146 of the Electricity Act, 2003 (Act). The word "any" appearing in section 146 of the Act, makes it clear that, non-compliance of orders or directions within time stipulated by the Hon'ble High Court and Hon'ble Supreme Court also comes within the scope of the Section 146 of the Act. He further submitted that, even though, this inaction of the respondents amounts to contempt of Court, but the Commission, as per Section 175 of the Act, can also initiate appropriate action for such violation of the order of the Hon'ble Supreme Court.
14. He further submitted that Section. 22 of the Contempt of Courts Act, 1971 makes it clear that the provisions of contempt of Courts Act shall be in addition to and not in derogation of any other law. Any contempt proceedings under the Contempt of Courts Act, for failure to comply any order/direction under the Electricity Act, 2003 is not in derogation of the Electricity Act, 2003. Both the Contempt of Courts Act, 1971 and the Electricity Act, 2003 are in addition to and not in derogation to each other. There is no contradiction between the two Acts but in any event golden rule of interpretation suggest that even if any Act is enacted later, the later enactment of legislation shall prevail.
15. He submitted that in compliance to the direction dtd. 13.05.2011 of the Hon'ble Supreme Court, though the petitioner deposited Rs 40 lakhs within the time as directed by the Apex Court, the respondent in utter violation of the Apex Court's Order has not provided the power supply to the unit of the petitioner.
16. Shri Suresh Tripathy, Advocate appearing on behalf of the respondents, submitted as follows:

- i. The petitioner has not approached the Commission in clean hand, in view of the fact that he has filed a Contempt case against the respondents in the Hon'ble Apex Court, for non-implementation of the Order of the Hon'ble Apex Court. This fact has been suppressed by the petitioner before the Commission. On this solitary ground only, the present petition is not to be admitted and shall liable to be rejected.
- ii. The respondents have filed an Interlocutory Application bearing IA No. 3 of 2011 in the said SLP (C) No. 35573 of 2010 before the Hon'ble Supreme Court of India, New Delhi seeking clarification of the above Order dated 13.05.2011 and the same is also pending before the Hon' ble Supreme Court.
- iii. For restoration of power supply, the Petitioner/consumer is required to comply with the conditions as has been laid down in the OERC Distribution (Condition of Supply) Code, 2004. Accordingly, after deposit of the amount as per the direction of the Hon'ble Apex Court, by the petitioner, the respondents asked the petitioner vide their letter dated 27.05.2011 to comply with the required formalities before providing power supply to his unit.
- iv. In regard to the termination of agreement, dismantle of lines and fresh feasibility study in 33KV supply system to provide power supply with contract demand 750KVA, the respondents submitted that M/s. Raghunath Paper Mills Ltd. has purchased the unit of M/s. Konark Paper Industries Ltd. through the Official Liquidator. The power supply was disconnected on 31.08.1998 to the M/s. Konark Paper Industries Ltd. due to non payment of energy dues. The power supply agreement was terminated with effect from Nov,1998. The arrear as on date of disconnection of power supply was Rs. 1,12,64,266.00 and the security deposit to the credit of the consumer was Rs.33,62,004.00. After termination of agreement the security deposit was adjusted with the arrear and net amount of Rs.79,02,262.00 was claimed to the consumer.

- v. Regulation. 18 of the OERC Distribution condition Supply Code 1998 states as follows:
- “On termination of the agreement, the licensee shall be competent to remove the service line and other installations for supply of power from the premises of the consumer”.
- Since the consumer was availing power with dedicated 33 KV line to its premises tapping from our 33 KV trunk line of the NESCO, this was dismantled after termination of the agreement. The petitioner had taken over the custody of the unit M/s Kalinga Paper & Industries Ltd. on 28.03.2008 & had applied for new connection to the said premises. As per Regulation 16 (2) of the OERC Distribution (Condition of Supply) Code, 2004 after permanent disconnection, if the consumer wishes to revive the connection, then it would be treated as a fresh application for connection and would be entertained only after outstanding dues have been cleared.
- vi. The Respondents after receipt of application for new connection from the petitioner, have made the feasibility study and issued permission in favor of the petitioner with a stipulation to clear the arrear dues amounting to Rs 79, 02,262.65 and also for the security deposit amounting to Rs 24,90,264.00 as per the prevailing Regulations. The petitioner without complying the above has filed this petition under Section 146, 149 & 151 of the Electricity Act, 2003 for with a prayer for prosecution and punishment for the respondent.
17. Heard the parties at length. On the query made by the Commission, the legal counsel appearing on behalf of the petitioner admitted that, the petitioner has filed a Contempt Petition before the Hon’ble Supreme Court against the respondents, for non-implementation of the Interim Order dated 13.05.2011 passed by the Hon’ble Apex Court in SLP. No. (C). 35573/2011. The Hon,ble Supreme Court is the only competent court to decide as to under what circumstances and considerations, they have passed the interim order. The respondents have already approached the Hon,ble Supreme Court for clarification of the Order dated 13.05.2011 and the petitioner has also admittedly filed a Contempt Petition before

the Hon'ble Supreme Court which is pending and was suppressed by the petitioner before the Commission. Only after the same was disclosed by the learned counsel appearing on behalf of the respondents, the learned counsel of the petitioner admitted the same fact before the Commission, else the Commission, would have remained in dark about this material development of filing of the Contempt Petition by the petitioner before the Hon,ble Supreme Court of India.

18. In view of the aforesaid factual development and the respondents having approached the Hon'ble Apex Court for clarification of the Order dated 13.05.2011, the Commission is not inclined to interfere in this case now as the Contempt petition filed by the petitioner against the respondents is subjudice before the Hon,ble Apex Court.
19. Accordingly the Case is disposed of.

**(B.K.Misra)**  
**Member**

**(K.C.Badu)**  
**Member**

**(S.P.Nanda)**  
**Chairperson**