

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012**

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**Present : Shri S.P Nanda, Chairperson
Shri B.K. Misra, Member
Shri S.P.Swain, Member**

Case No. 89/ 2012

M/s. NESCOPetitioner

Vrs.

M/s. JSPL & anotherRespondents

In the matter of: Application under Regulations 18 &19 of the OERC(Terms & Conditions for open Access) Regulations, 2005 for payment of cross-subsidy surcharge thereof by M/s. Jindal Steel & Power Ltd.

For the Petitioner: Shri Sarbeshwar Bhuyan, Sr. GM (Elct.), NESCO

**For the Respondents: Shri Avijit Pal, Advocate on behalf of M/s JSPL
Shri P. K. Dash, Sr. GM (PS), SLDC**

ORDER

Date of hearing: 30.08.2013

Date of order: 01.02.2014

1. In the present case the Petitioner NESCO a DISCOM in Odisha has appealed before this Commission to adjudicate the matter of payment of cross-subsidy surcharge by M/s. Jindal Steel and Power Ltd. (JSPL) to NESCO on account of import of 50 MW power by M/s. JSPL Barbil through intra-State short term open access from M/s. JSPL, Angul. M/s. JSPL is a steel conglomerate with integrated steel plant having 900 MW Captive Power Plant at Angul and Iron Ore beneficiation and pelletisation plant at Barbil. Both the plants at Angul and Barbil are part of the steel making facility of the industry in Odisha.
2. The plant of M/s. JSPL at Barbil was availing power supply from NESCO for a contract demand of 50 MW but SLDC allowed it short term open access of 50 MW power on RTC basis from Captive Power Plant of M/s. JSPL at Angul from 1st July, 2011 to 31.10.2012 without levying cross-subsidy surcharge to the consumer plant at Barbil as per OERC Regulation.

3. NESCO claims that Open Access Surcharge is payable to them by Barbil plant of M/s. JSPL for availing power from their Angul Captive Power Plant vide Clause 4(2)(i) of OERC (Determination of Open Access Charges) Regulations, 2006 read with Section 42(2) of Electricity Act, 2003. NESCO further submitted that copies of invoice for power exported from M/s. JSPL Angul through open access to M/s. JSPL, Barbil clearly establish that both the unit of M/s. JSPL are independent units since the plant of M/s. JSPL at Barbil has been charged @ Rs.4.84 paise per unit for power availed by them from the Angul unit of M/s. JSPL.
4. M/s. JSPL in its counter submitted that both the units of M/s. JSPL are separate units of the same entity and the invoices raised against the sourcing of power are the consequence of goods transferred between two units to fix of accountability among various units of same company. This is actually a book transfer to evaluate and ascertain the performance and profitability of each individual unit and not exactly a sale. M/s. JSPL submitted that cross-subsidy surcharge is exempted when power is sourced by a captive generating plant to its captive user as provided in Clause 42(2) proviso 4 of Electricity Act, 2003. Further, under Rule 3 of Electricity Rule, 2005 there is no distinction between the separate units of a captive user.
5. SLDC in its reply submitted that as per Para “(D) Power” of MoU between Govt. of Odisha and M/s. JSPL on 03.11.2005 M/s. JSPL, Angul has been considered as a industry having CGP with a capacity of 900 MW. The estimated power requirement of the proposed steel plant will be 770 MW out of which approximately 47 MW will be requirement for the iron ore beneficiation plant at Barbil. Thus the payment of cross-subsidy surcharge purely depends on the CGP status of M/s. JSPL, Angul basing on ratio of actual generation and self consumption which is not available with them.
6. The Commission vide its interim order dtd. 02.09.2013 has asked M/s. JSPL to submit its written note of submission regarding status of its captive power plant. M/s. JSPL in its rejoinder submitted that the company has fulfilled the two criteria envisaged by Rule 3 of the Electricity Rule, 2005 relating to a minimum 26% ownership and 51% self consumption from power generated by the Captive Generating Plant. M/s. JSPL submitted a chart demonstrating the total captive consumption by the Company for the April 2012 to March, 2013 showing that the Company has qualified as a captive generating plant by consuming more than 51% net energy generated by the captive plant. M/s. JSPL has also considered the power sourced by GRIDCO from 16.11.2011

to 31.07.2012 as captive consumption due to imposition of Section 11 of Electricity Act, 2003 by Govt. of Odisha Notification dtd. 25.11.2011 and 23.07.2012.

7. M/s. JSPL further submitted that the Commission vide its order dtd. 03.01.2013 in Case No. 129/2010 has denied the benefit of deemed self consumption by a captive user by supplying power to GRIDCO under Notification of Govt. of Odisha invoking Section 11 of Electricity Act, 2003 for the FY 2012-13. Being aggrieved by the said order of the Commission the respondent M/s. JSPL had filed writ petition before Hon'ble Orissa High Court vide WP(C) No. 18481/2013 wherein Hon'ble High Court was pleased to grant a stay on the operation of the said order dtd. 03.01.2013 of Hon'ble Commission. Therefore, in the light of the said stay order the respondent prayed the Commission to consider the notification dtd. 25.11.2011 and 23.07.2012 of Govt. of Odisha invoking Section 11 of Electricity Act, 2003.
8. Heard the parties at length. In view of the Section 42 (2) Proviso 4 of the Act no surcharge shall be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use. In accordance in Electricity Rule, 2005 a power plant shall qualify as "Captive Generating Plant" if
 - (i) Not less than 26% of the ownership is held by the captive users.
 - (ii) Not less than 51% of the aggregate electricity generated in such plant, determined in annual basis, is consumed for the captive use.

As per the MoU dtd. 03.11.2005 signed with the State Govt. by M/s. JSPL the Steel Industry of M/s. JSPL at Angul and iron ore beneficiation and pelletisation plant of M/s. JSPL at Barbil are the part of steel making facility of the integrated steel plant of M/s. JSPL. The same fact has been corroborated by SLDC and has not been contested by M/s. NESCO, the Petitioner. Therefore, M/s. JSPL unit at Barbil is authorised to avail power through open access from captive generating plant at Angul without paying any cross-subsidy surcharge to NESCO if it satisfies the captive consumption status for the respective year.

The issue, therefore, remains that whether the 900 MW generating plant of M/s. JSPL at Angul satisfies the status of captive generating plant i.e. not less 51% of aggregate electricity generated in such generating plant determined on annual basis is consumed for the captive use.

The Petitioner during hearing raised the issue of status of captive generating plant for the FY 2011-12 and 2012-13 basing on the captive consumption of power at the steel making facility at Angul and pelletisation unit at Barbil taken together. The liability for payment of cross-subsidy surcharge for a particular period for power availed through open access by Barbil unit depends upon the status of said CGP in that period basing on its captive consumption as defined in Electricity Rules, 2005. In view of our order in Case No. 129/2010 dtd. 03.01.2013 the Barbil unit of M/s. JSPL is not required to pay any cross-subsidy surcharge to incumbent distribution licensee NESCO upto FY 2011-12 since Section 11 of Electricity Act, 2003 has been invoked by the State Govt. during that period and power injected to the Grid is treated as captive consumption thereby making captive consumption more than the requirement under Electricity Rules, 2005. But subsequent to that period the payment of cross-subsidy surcharge depends upon the status of CGP basing on captive consumption for the relevant financial year. The said captive consumption shall be determined as summation of consumption of industries of M/s. JSPL at Barbil and Angul. Therefore, beyond FY 2011-12 the above decision of the Commission shall hold good. But for FY 2012-13, since the Hon'ble High Court has stayed the applicability of our order in Case No. 129/2010 for the said period vide Misc. Case No. 17126/2013 in WP(C) No. 18481/2013 the payment of cross-subsidy surcharge for that period only shall depend upon the outcome of the writ petition.

9. Accordingly, the case is disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S.P. Nanda)
Chairperson