

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

Present: Shri S. P. Nanda, Chairperson
Shri S. P. Swain, Member
Shri A. K. Das, Member

Case No. 98/ 2012

M/s. Indian Metals & Ferro Alloys Ltd.
Vrs.
GRIDCO & Another

.....Petitioner

.....Respondents

In the matter of: Application under Chapter-XIII Regulation-70 of OERC (Conduct of Business) Regulations, 2004 for review/modification of Order dated 04.09.2012 passed in Case No. 40/2007 and also for appropriate order thereon.

For Petitioner: Shri S. K. Padhi, Sr. Advocate and Shri S. S. Mohanty, Advocate, Shri Sanjeev Das, VP (CA), Shri D. S. N. Achary, GM (Legal), M/s. IMFA.

For Respondents: Shri N. C. Panigrahi, Sr. Advocate, Shri L. N. Mohapatra, Advocate, Shri S. R. Panigrahi, Advocate appeared on behalf of both OPTCL & GRIDCO. Shri L. R. Dash, GM, GRIDCO, Shri U. N. Mishra, CGM, GRIDCO & Shri B.P. Mishra, CGM (RT&C), OPTCL.

Date of Hearing: 20.06.2014

Date of Order: 12.08.2014

ORDER

1. The present application has been filed by M/s. IMFA Ltd. to review / modification of our order dated 04.09.2012 passed in Case No. 40/2007 passed in consequence to Hon'ble Supreme Court in CA No. 6637 of 2008. The Commission in the said Order had directed as follows:

“14. xxxxxxx However, in deference of Hon'ble Supreme Court Order (quoted at para-3 (ii) above), the appellant (petitioner herein) shall pay at the rate of 17.5 paise per unit for the power utilised at its Therubali plant in the FY 2001-02 through intra-state transmission. The wheeling loss 3.7% in kind shall be applicable for such intra-state transaction of power.”

2. Consequent upon the passing of the above order by the Commission the petitioner requested M/s. OPTCL (STU) to revise the bill for FY 2001-02 @ 17.5 paise per unit and make refund of the excess amount paid. But OPTCL expressed its inability to do so stating that any refund of wheeling charges after adjustment of the charges @17.5 paise per unit is not possible since the Hon'ble Apex Court has not directed them to make adjustment in the bill of the Petitioner.

3. Being aggrieved by the above stand of OPTCL, the Petitioner has pointed out that by virtue of “Orissa Electricity Reform (Transfer of Transmission and Related Activities) Scheme, 2005” the erstwhile transmission business of respondent GRIDCO with all assets and liabilities relating to such business was transferred to and vested with the OPTCL w.e.f. 01.04.2005.
4. Learned Counsel appearing on behalf of the Respondent- OPTCL submitted that the present claim of the Petitioner being purely a money claim the Commission lacks jurisdiction to adjudicate the matter under section 86 (1) (f) of the Electricity Act, 2003. They further submitted that the present claim is barred by the principles of *res judicata* since the dispute between the parties were before the Arbitral Tribunal appointed by the Commission vide Case No. 101/2004 dated 01.07.2006 whose award is pending before Ld. District Judge, Khurdha for final disposal.
5. During the hearing of the present case on 20.06.2014 the Commission in their interim order No. 4 directed both M/s. IMFA Ltd. and GRIDCO Ltd. to file affidavits stating therein whether arrear transmission charges to be paid by the Petitioner as per the guideline of Hon’ble Supreme Court in CA No. 6637/2008 are subject matter of ARBP No. 139/2008 and whether the same matter has been raised before the Ld. District Judge of Khurda.
6. In response to the Commission’s above direction the Respondent OPTCL made an inconclusive statement without categorically clarifying that the issue of transmission charge for FY 2001-02 as per Hon’ble Supreme Court’s direction was not in the arbitration proceeding which is now pending before Ld. District Judge, Khurdha. They also sought further time to explain the question of law and facts.
7. Heard the parties at length and also took note of their written submissions. Further time to explain the question of law and facts as sought by OPTCL is not allowed since the review petition of this nature can be made on very limited ground. Since the transmission function of GRIDCO has now been vested by the State Govt. with OPTCL by virtue of “Orissa Electricity Reform (Transfer of Transmission and Related Activities) Scheme, 2005” with all assets and liabilities relating to such business w.e.f. 01.04.2005, therefore, we direct OPTCL, the present transmission utility, to make adjustment in the transmission bill of the Petitioner for FY 2001-02 as per our order in Case No. 40/2007.
8. Regarding adjustment of differential amount in the transmission bill of the Petitioner for FY 2001-02, the same issue had been raised by the respondent GRIDCO in the original proceeding stating that award of the Arbitration Tribunal dtd. 23.03.2008 is pending before

Ld. District Judge, Khurdha for final disposal. But the Commission did not accept the contention of GRIDCO since, Hon'ble Apex Court had directed OERC to decide whether the petitioner in the present case is liable to pay transmission charges and if so then adjustment may be made in the revenue requirement of GRIDCO on the basis of 17.5 paise per unit for that year. Accordingly, above issue had already been addressed by the Commission in the original proceeding. Neither the Petitioner nor the Respondent OPTCL can raise this issue now in a review petition which is very limited in nature.

9. Accordingly, the case is disposed of.

Sd/-
(A K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson

