

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. 63/2013

CCPPO	Petitioner
Vrs.		
NESCO & Others	Respondents

In the matter of: **An application under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 along with for review of the order dated 03.01.2013 of the OERC passed in Case No. 129/2010.**

For Petitioner: Shri R. P. Mohapatra, authorized representative of M/s. CCPPO, Shri S. K. Panda, Secretary, M/s. CCPPO

For Respondents: Shri Sudeep Mishra, Deputy Manager (Elect.), NESCO, Shri Debashis Das, AVP (Reg. Affairs), CSO, WESCO, NESCO & SOUTHCO, Shri Sudipta Kumar Harichandan, AGM (Law), CESU, Shri T. K. Mohanty, GM (Elect.), CESU, Shri P. K. Padhy, GM (R&M), CESU, Shri P. K. Dash, CGM (Comm.), CESU, Shri L. R. Dash, GM, GRIDCO, Shri U. N. Mishra, CGM (PP), GRIDCO, Shri Umakanta Sahoo, GM (GO), SLDC, Shri Prashanta Kumar Parida, A.E.E (Elect.), EIC (Elect.)-cum-PCEI (O), Ms. Niharika Pattnaik, ALO, DoE, GoO and Shri Bibhu Charan Swain, authorised representative of M/s Tata Sponge Iron Limited are present.

Nobody is present on behalf of M/s. Jindal Steel & Power Limited & Dept. of Industry, GoO.

ORDER

Date of Hearing: 28.10.2014

Date of Order: 29.11.2014

The present petition had been filed by M/s. Confederation of Captive Power Plants of Odisha (CCPPO) represented by its Secretary Shri S.K.Panda to review our order passed in Case No. 129/2010 regarding treatment of power injected to the State Grid for FY 2012-13 by the CGPs of Odisha when Section 11 of the Act was imposed upto July, 2012.

2. As per Regulation 70 (1) of OERC (Conduct of Business) Regulations, 2004 the Commission may review any order within 90 days of passing such order. In the present case the petition has been filed with a delay of 144 days of passing the original order by the Commission. The Commission in their interim order dated 30.09.2014 had asked the

petitioner to explain the reasons for such a delay. During the hearing on 28.10.2014 Sri R.P.Mohapatra on behalf of the Petitioner explained the delay of reasons as follows:

- (a) In view of notification of the State Government dated 10.04.2012 and due to past practices the CGPs were under the impression that the injection of the power to the State Grid during the period of invocation of Section 11 of the Act will be considered as deemed self consumption and status of CGP can be determined only after March, 2013.
- (b) Earlier State Government was issuing notice stating the withdrawal of Section 11 of the Act but for that year that did not happen. Therefore, CGPs were under the impression that Section 11 had been continuing beyond July, 2012.
- (c) Only after the Order of the Commission in Case No. 129/2010 dated 03.01.2013 it came to light that some CGPs may not fulfil the conditions of self consumption of at least 51% of net generation.
- (d) Some members of Confederation decided to file appeals in alternate forum only after consultation with its members M/s. CCPPO would decide to file a review petition before the Commission.

All the above reasons have resulted in filing the present review petition with a delay of 144 days and therefore, the Petitioner has prayed for condonation of delay in filing the petition and to consider the application on merit.

- 3. One of the objector- CESU stated that it is well settled in law that while making application for condonation of delay, each day of delay is to be explained with sufficient cause. Where a case has been presented in the Court beyond limitation, the applicant is to explain the Court as to what was the 'sufficient cause' which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent or for want of bonafide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive there cannot be a justified ground to condone the delay. Therefore, the present application for condonation of delay is to be rejected.
- 4. Another objector NESCO submitted that one of the member of M/s. CCPPO namely M/s. Jindal Steel and Power Ltd. has challenged the said order of the Commission in Case No. 129/2010 dated 03.01.2013 before Hon'ble High Court of Orissa in WP(C) No. 18481/2013 in which it has submitted that the association of Generating company is neither a proper nor

a necessary party and is extraneous to these nature of disputes. Therefore, the application of M/s. CCPPO in the present dispute which is a association of CGPs may not be accepted.

5. We considered both the prayers of the Petitioner and views of the objectors. The Hon'ble Apex Court while deciding the Civil Appeal No. 6975 of 2013 in the case of Basawaraj & Ors. Vrs. The Spl. Land Acquisition office by judgement dated 22.08.2013 have held that *an unlimited limitation would lead to a sense of insecurity and uncertainty and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.*
6. The Petitioner has neither shown any reason for day-wise delay in the present case nor the reasons shown that the delay is on sufficient grounds to condone the same. Causes indicated are general in nature and the Petitioner has failed to convince us the delay caused was beyond his control. Therefore, the condonation of delay application is rejected.
7. Accordingly, the case is not admitted for hearing on merit.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson