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Case No. 92/2013

the Petitioner which requires billing under LI category, NESCO started raising bills on the basis of LI tariff category from April, 2012 onwards and issued disconnection notice on 29.09.2012 if payments are not made within 15 days of issuance of said notice. Being aggrieved by the above decision of NESCO, the Petitioner moved GRF, Jajpur Road and subsequently to the Ombudsman-II, Bhubaneswar.

2. The Ombudsman-II initially stayed the disconnection notice issued by the Licensee and finally disposed of the case vide CR. Case No. Omb (II) N-72 of 2012 dated 22.11.2013 holding that in the present case the nature and purpose of power supply is contradicting the recorded / calculated data of the meter and the terms of the agreement executed between the parties. During the course of hearing the respondent has admitted that the Petitioner has not violated the capped units of 4 MU/Month and 30 MU/annum but have violated the permitted 50 MW of contract demand. This forum is not satisfied with the calculation of the total contract demand of both feeders just by adding the magnitude of the KVA element without considering its direction hence to my opinion *the Petitioner has not violated the agreement term to the extent of KVA demand so as to encourage the licensee in billing with LI category on the other hand the licensee has not followed Regulation – 82 of OERC Supply Code, 2004 correctly for re-classification of tariff category. The existing agreement (valid up to 30.06.2012) is also not proper in view of tariff categorization and at the same time has not been got approved from the Hon'ble Commission, being considered as a special agreement. To the question of legality of the agreement for its period and its void ab initio this forum is not competent to pass any comment and the said matter can be dealt in any of the appropriate forum. For renewal of agreement both parties should conclude to a tariff category under Regulation in force basing on the nature and purpose of power supply.*

Direction of this Forum in Notice No. 297 dated 08.11.2012 against disconnection of power supply is hereby vacated.

3. When the matter stood thus NESCO again served a disconnection notice on 17.12.2013 stating that the stay on the earlier disconnection notice has been vacated by Ombudsman while finally disposing of the case.
4. Therefore, the Petitioner came before this Commission under Section 142 of the Electricity Act, 2003 for non-compliance of Ombudsman order by the Respondent-NESCO. When this proceeding was under consideration by the Commission the Petitioner filed another application under Section 86 (1) (f) and (k) of the Electricity Act, 2003 against the same respondent for not renewing the existing agreement or executing a fresh agreement under the category of 'industries owning generating station and captive power plant' availing emergency supply as per Regulation 80 (15) of OERC Distribution (Conditions of Supply)

Code, 2004 basing on the above mentioned order of the Ombudsman-II passed in CR. Case No. Omb (II) N-72 of 2012.

5. The respondent- NESCO submitted that the Petitioner is importing power irrespective of the running status of CGP as the export of power is there in corresponding DIP which shows import of power at the same time. That means the Petitioner is importing power concurrently while exporting in the same DIP. This violates the Regulation since Regulation 80 (15) of the Supply Code, 2004 the category of 'Emergency supply to industries owning CGPs' relates to supply of power to industries with generating station including captive power plants only for the start up of the unit or to meet their essential auxiliary and survival requirement in the event of failure of their generating capacity. Therefore, the drawal of power by the Petitioner comes under the unauthorised use of electricity as provided under Section 126 (6) (b) (iv) of the Act. The respondent keeping past drawal in view has only claimed a demand for differential revenue intimating the consumer that the billing from April, 2012 to July, 2012 has been revised under LI category. Respondent also emphasized that the Ombudsman has already observed in his order that in the present case the nature and purpose of power supply is contradicting to the recorded / calculated data of the meter and the terms of the agreement executed between the parties.
6. We perused all the submissions and counter submissions made by the parties and also heard them in detail. The scope of the present case under Section 142 of the Electricity Act, 2003 is very limited in nature. In the instant case it is only to enforce the order of the Ombudsman-II. In his order Ombudsman-II has clearly stated that the existing special agreement between the petitioner and the respondent have not been violated by the Petitioner which requires billing under Large Industry (LI) category. At the same breath Ombudsman-II has also observed that the impugned agreement as a special agreement should have got approved by this Commission which has not happened. Therefore, we direct the Respondent NESCO to bill the Petitioner purely as a normal 'emergency supply category' as per Regulation 80 (15) of the OERC Distribution (Conditions of Supply) Code, 2004 during the validity of the existing agreement without referring to the additional Clause under special agreement which requires billing under LI category if those clauses are violated.
7. Regulation 81 of the OERC Distribution (Conditions of Supply) Code, 2004 deals with consumers under special agreement which requires approval of the Commission. If any consumer intends to avail any special tariff depending upon nature and purpose of supply he must enter into an agreement with the licensee and get approval of the Commission. In the present case Ombudsman-II has observed that for renewal of the existing agreement both the

parties should conclude to a tariff category basing on the nature and purpose of supply as a special agreement. No need to say that this requires subsequent approval of the Commission under appropriate Regulation. Therefore, both the parties are at liberty to enter into a special agreement with the approval of the Commission, if they desire so.

8. Summarising the above, we hold that,

(a) Since the present petition is under Section 142 of Electricity Act, 2003 the Commission has limited scope to examine the validity of claims made by each other before the Commission again which has been re-examined by Ombudsman-II on GRF's order.

(b) Accordingly, we are of the opinion that the order of the Ombudsman-II has reached its finality since the order of the Ombudsman-II has not been challenged in any appropriate Fora and hence accepted by parties concerned herein.

Therefore, respondent- NESCO shall bill the Petitioner as a normal emergency supply category as per Regulation 80(15) of the OERC Distribution (Condition of Supply) Code, 2004 during the validity of the existing agreement without referring to the additional Clause under special agreement which requires billing under LI category under violated condition, since the existing agreement has to conclude on expiry.

Both parties are at liberty to enter into a special agreement on expiry of the existing agreement with the approval of the Commission.

(c) Respondent NESCO shall revise the bill in accordance with order of Ombudsman-II within a period of one month of this order failing which a penalty of Rs.50,000/- and Rs.10,000/- for each day of delay shall be payable by NESCO counting from the 31st day. The amount shall be recovered from officer/ staff responsible for such delay by NESCO. Petitioner shall pay the claimed amount within 15 days of receipt of the bill from NESCO failing which normal recovery procedure as per rules shall be followed by NESCO.

9. Accordingly, the both cases are disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S.P. Nanda)
Chairperson