

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. 21/2014

PTC India Limited	Petitioner
Vrs.		
GRIDCO & Another	Respondents

In the matter of: An application u/S. 142 of the Electricity Act, 2003 for none compliance of Orders dated 01.02.2012 & 30.04.2012 of the OERC passed in Case No. 03/2012 and order dated 07.05.2012 passed in Case No. 13/2012.

For Petitioner: Shri Barun Pathak, Advocate on behalf of M/s PTC India Limited,

For Respondent: Shri U. N. Mishra, CGM (PP), GRIDCO, Shri S. K. Sahoo, DGM (Fin.), GRIDCO, Ms. Sasmita Patjoshi, BM (PP).

Nobody is present on behalf of M/s Orissa Power Consortium Limited and M/s. Meenakshi Power Limited.

ORDER

Date of hearing:-30.09.2014

Date of order:07.02.2015

The Petitioner M/s PTC India Ltd. (PTC) has filed this petition against GRIDCO under Section 142 of the Electricity Act, 2003 for disobedience and non-compliance of the orders of the Commission dated 01.02.2012 and 30.04.2012 passed in Case No. 03/2012 and order dated 07.05.2012 passed in Case No. 13/2012.

2. In its submission, PTC has stated that;

- (a) The Commission in its order dated 19.05.2011 passed in Case Nos. 17 & 24 of 2011 has determined the provisional tariff towards procurement of power by GRIDCO from the small hydel projects of M/s. Meenaskhi Power Ltd. (MPL) and M/s. Orissa Power Consortium Ltd. (OPCL) through PTC and observed the following.

“25. XXXXXXXXXXXXXXXXXXXXXXXXXXXX. Therefore, the Commission extends the generic tariff approved for small hydro electric projects in Case No.37/2008 vide its order dtd.14.09.2010 to Samal Barrage SHEP of M/s. OPCL and that of Middle Kolab and Lower Kolab SHEPs of M/s. MPL with the following directions:

- i) *The tariff for the 100% of power supplied by Samal Barrage SHEP of M/s. OPCL and that of Middle Kolab and Lower Kolab SHEPs of M/s. MPL is fixed at Rs.3.64 per unit*
 - ii) *PTC's trading margin as usual is fixed at 4 paise per Kwh, for 100% of power supplied by these stations to GRIDCO.*
 - iii) *Therefore, the total tariff for the power purchase from these stations shall be Rs.3.64 plus Rs.0.04 which equals Rs.3.68 per unit.*
 - iv) *In the absence of cost data of the above generating stations duly approved by the STC, and in view of the fact that the present tariff for the above SHEPs is not sufficient enough to pay back the loans incurred by these generating stations, the Commission fixes the above tariff as an interim measure till the time of availability of the cost data for final determination of tariff.*
 - v) *In case the final tariff based on cost data turns out to be different from this generic tariff, both the above generators and GRIDCO shall adjust their payables and receivables accordingly from the future bills.*
- (b) GRIDCO, instead of making payment in accordance with the above order of the Commission, filed a review petition, against this order which was registered as Case No. 3/2012. The Commission in its interim order dtd. 01.02.2012 on the said review petition has observed the following.

"10. The representatives of the developers pointed out that because of non-payment of power purchase bill by GRIDCO to PTC and consequently PTC to the developers, their bankers are going to treat the loan as NPA. This is affecting their reputation and business prospects. After perusal of the petition and submission made by the respondents the Commission holds that, on some pretext or other, GRIDCO should not withhold the payment to be made to the respondents as per the order dated 19.5.2011 of the Commission. Therefore, the Commission directs GRIDCO to clear the outstanding amount calculated at the rate as per the Commission Order dated 19.05.2011 in two instalments. Out of the total amount, which is to be calculated in terms of order dated 19.05.2011, the 40% shall be paid by GRIDCO during February, 2012 and the rest 60% shall be cleared during March, 2012 along with monthly current bills.

11. In the meantime GRIDCO should take steps to expedite the approval of the cost of these two small hydro projects by PTC. The payment made and to be made as indicated in para-10 at the rate approved by the Commission in their order dated 19.5.2011 would be adjusted in the future bills based on the outcome of this petition or determination of final tariff whichever is earlier."

- (c) Further, the Commission in its final order dated 30.04.2012 on the said review petition has observed the following

"4. Coming to the merit of the petition it is found that GRIDCO has prayed for consideration of the following matters:

- (a) *Allow the rate of Rs.3.20/Kwh for the entire power or Rs.3.64/Kwh for 88% power.*

- (b) *Re-assess the tariff considering the benefits availed by the SHEPs through CDM.*
- (c) *Implement the Order dtd. 19.05.2011 from the date of Order i.e. from May, 2011 onwards.*
- (d) *Consider the trading margin of Rs.0.04/Kwh on 88% of energy.*

It is a settled position of law that orders of statutory authorities can be reviewed only in case of mistakes apparent from records and this mistake can be mistakes of fact or law. The prayer made by GRIDCO in its review petition calls for fresh adjudication on new matters which cannot be considered in a review petition.

- 5. *GRIDCO has cited financial stringency for not adhering to the payment schedule as prescribed in our earlier order dtd. 01.02.2012. It has prayed for extension of time to liquidate the arrears to M/s. PTC. Considering the liquidity crunch faced by GRIDCO we order that the arrears upto January, 2012 payable to M/s. PTC on account of M/s. Meenakshi Power Ltd. and M/s. OPCL should be liquidated in six monthly instalments starting from May, 2012."*

- (d) Since, above orders of the Commission was not complied by GRIDCO by releasing payment to PTC, a petition was filed by PTC before the Commission under Section 142 of the E.A, 2003, which was registered as Case No. 13/2012 and the Commission in its order dated 07.05.2012 on the said petition of PTC, had directed GRIDCO as extracted below:-

"6. The Commission therefore directs GRIDCO to comply the above Order dated 30.04.2012 passed in Case No. 03/2012 so that both the generators M/s MPL & M/s OPCL along with the trader M/s PTC India Ltd. will be financially sound to carry out their business and supply power to GRIDCO for the interest of the State in present power shortage scenario."

- (e) Clause 10.3.7 of the Power Sale Agreements (PSAs) between PTC and GRIDCO provides for levy of surcharge on Delayed Payment (DPS) and the PSAs as approved by this Commission. The Commission in the aforesaid orders have directed GRIDCO to make payments due to PTC. Hence, GRIDCO is required to make all payments due under PSAs i.e. including DPS. GRIDCO owes PTC on amount of Rs.6,06,50,171/- towards DPS as on 31.01.2014. PTC has written several letters to GRIDCO to clear the DPS and raised this issue in various meetings with GRIDCO. But GRIDCO, deliberately, knowingly and willingly has violated the said orders of the Commission.

- 3. In view of the above, PTC has prayed the Commission to direct GRIDCO to immediately comply with the said orders of the Commission and release the payments to PTC forthwith including the payment towards DPS.

4. The Respondent No.1, GRIDCO has submitted as follows:
- (a) PTC vide its letter 19.12.2013 had claimed an amount of Rs.6,77,38,049/- towards DPS against power supplied to GRIDCO from M/s. MPL, M/s. OPCL and Tala HEP. Out of which DPS on account of power purchase from M/s. MPL and M/s. OPCL from May, 2011 to end of FY 2012-13 was Rs.5,80,52,602/-.
 - (b) The arrear payment to PTC was resolved by the Order dated 07.05.2012 of the Commission passed in Case No. 13/2012. Further, the Commission in its order dated 01.10.2012 passed in Case No. 86/2011, has asked the CGPs and Co-generation plants to forego DPS for power supplied upto 31.03.2012. So, the claim of PTC for DPS from 19.05.2011 is not justified and need to be relaxed on similar considerations.
 - (c) However, GRIDCO has released an amount of Rs.94,47,670/- towards DPS on the power purchase from Tala and Chukha HEP, M/s. MPL and M/s. OPCL. Out of which an amount of Rs.13,76,310/- is towards DPS of M/s. MPL (from 4/2012 to 11/2012) and M/s. OPCL (from 5/2012 to 11/2012).
 - (d) Considering financial crisis of GRIDCO, the Commission in the said orders have directed GRIDCO to liquidate the arrears of PTC upto January, 2012 in six monthly installments and the said orders have not mentioned anything about DPS, though PTC has categorically prayed the Commission to levy interest on outstanding dues as per CERC guidelines. However, GRIDCO has already paid the arrear amount towards power procurement from M/s. MPL and M/s. OPCL (through PTC) during the period from January, 2009 to January, 2012, in six months installments as per the Commission's order dated 07.05.2012 passed in Case No. 13/2012.
 - (e) As such, no arrear payment regarding DPS, as raised by PTC now after reconciliation, is due to PTC and in no way GRIDCO has violated the orders of the Commission. Hence, the allegation of PTC for willful disobedience and non-compliance of OERC order is not at all correct. Hence, GRIDCO has prayed the Commission to reject the petition of PTC filed under Section 142 of the Electricity Act, 2003 at the stage of admission.
5. In a reply to the submission of GRIDCO, PTC has further submitted that,

- (a) Even the supply of power is started from 2009, the surcharge has been calculated and claimed by PTC w.e.f. 19.05.2011 i.e. the date of fixation of provisional tariff by this Commission.
 - (b) The payment of DPS was due in accordance with Clause 10.3.7 of the PSAs, which have been approved by the Commission. The Commission in its orders have directed GRIDCO to make payment of the arrears due to PTC, then the same would also include payment of DPS payable to PTC in accordance with PSAs. It is wrong on the part of GRIDCO to say that surcharge payments are not payable. Further, orders passed by the Commission in Case No. 86/2011 have no bearing on the present case.
 - (c) The payment of Rs.94, 47,670/- made by GRIDCO was adjusted against outstanding surcharge of Tala and Chukha HEPs. No surcharge payment has been made by GRIDCO towards power purchase through PTC from M/s. MPL and M/s. OPCL.
 - (d) The Commission may graciously pleased to direct GRIDCO to immediately comply with the impugned orders of the Commission and release the surcharge payments due to PTC.
6. Heard the parties at length. Upon considering the oral submissions and written notes of submission of the parties, the Commission observed as follows:-
- (a) The Commission vide its order dated 19.05.2011 passed in Case Nos.17 & 24 of 2011 determined the provisional power procurement price of M/s.GRIDCO Ltd. towards purchase of power from M/s. MPL and M/s. OPCL through M/s.PTC, which includes trading margin of 4 paise/kwh of M/s.PTC. M/s. GRIDCO Ltd., instead of making payment at the price fixed by the Commission, filed a review petition (registered as Case No.3/2012) against the said order of the Commission with a prayer as mentioned at para 2(c) of this order. During the hearing of the said review petition, the Commission observed that M/s.GRIDCO Ltd. is not paying M/s.PTC the power procurement cost as per the provisional price determined by the Commission. Therefore, in order to facilitate appropriate transactions the Commission in its interim order dated 01.02.2012 on the review petition, directed to M/s.GRIDCO Ltd. to clear all the outstanding amount calculated at the rate as per the Commission's order dated 19.05.2011 in two instalments i.e. 40% in February and rest 60% in March, 2012. However, the Commission in its final order dated 30.4.2012 on the said review petition in Case No.3 of 2012, considering the liquidity crunch faced by GRIDCO, had directed GRIDCO to liquidate the arrears upto January, 2012 payable

to M/s. PTC on account of M/s. MPL and M/s. OPCL in six monthly instalments starting from May, 2012. Further, the Commission, in its order dated 07.05.2012 passed in Case No.13/2012 (petition filed by M/s.PTC u/S. 142 of the EA Act,2003), have only directed M/s. GRIDCO Ltd. to comply with the Commission's order dated 30.04.2012 passed in case No.03/2012.

- (b) Since, the power procurement dues were not paid by M/s. GRIDCO Ltd. to M/s. PTC on account of power purchase from M/s MPL & M/s OPCL, in all the above orders, the Commission have directed M/s. GRIDCO Ltd. to pay the outstanding amount/ arrears payable to M/s. PTC on account of M/s. MPL and M/s. OPCL and issue of DPS was not then emphatically considered by the Commission, though this issue was mentioned in the prayer of M/s.PTC.
- (c) M/s. GRIDCO Ltd. in its submission, has stated that as per the Commission's order dated 07.5.2012 passed in Case No.13/2012 they have paid the arrear amount towards procurement of power from M/s. MPL and M/s. OPCL through M/s.PTC within six instalments and this fact is also not denied by M/s. PTC in its submission. Hence, the petition filed by PTC against M/s GRIDCO Ltd. u/S 142 of the Electricity Act, 2003 on the above ground appears to be non-sustainable.
- (d) However, on the issue of DPS, it is understood that PTC has calculated and claimed DPS on the outstanding dues w.e.f. 19.5.2011 i.e. the date of order passed in case Nos.17 & 24, when the Commission determined the provisional tariff. Whereas, GRIDCO has calculated the DPS on the arrears arising out of the power purchase from April and May, 2012, indicating that the Commission passed the order on 30.4.2012 in Case No.3/2012 and on 07.5.2012 in Case No.13/2012 directing M/s. GRIDCO Ltd. to liquidate the arrear upto January, 2012 in six monthly instalments, considering financial crisis of GRIDCO and also not mentioning anything about DPS.

We further observe that, the pleadings of M/s GRIDCO is misplaced on DPS. The 'dues' includes DPS in case of delayed payment beyond the stipulated date as per regulations in force and agreed to by both sides in the agreements. In the review petition in case No.3/2012, the matter was placed by M/s GRIDCO before the Commission that they were unable to pay the dues of M/s PTC due to liquidity crunch and therefore, the Commission, in difference to the agreed provisions between the two parties, specified instalments as a solution considering the

situations. This revised 'payment terms' for the period under dispute has so far not contested by either of the parties, implemented accordingly by all and concluded. Otherwise M/s GRIDCO would have to pay as agreed in the agreements. However, fixation of rates by the Commission including the time it reached its finality resolving the disputes, raising the bills by M/s PTC subsequently and payments thereon made by M/s GRIDCO etc. are need to be taken into account for calculating the DPS by M/s PTC. On this front also we observe lack of appropriate transparency during reconciliation process with M/s GRIDCO by M/s PTC, resulting in further disputes. The matter could have ended at that point of time. Even after that both the parties herein could have resolved the matter as provided in the agreements.

- (e) We observe that the issue of 12% free power as viewed by M/s. GRIDCO Ltd. is not sustainable since this has already been settled in Case No. 86/2011 and the order has reached its finality.
- (f) We agree with the petitioner that the Commission's order in Case No. 86/2011 is not generic in nature and therefore is not applicable to the respondent herein. But we observe that the liquidity situation of M/s. GRIDCO Ltd. is not well due to inadequate cash flow from DISCOMs. This aspects has already been examined in order dated 30.04.2012 in Case No.03 of 2012 and viewed accordingly with appropriate relaxations.
- (g) We observe that there are rival claims on amount of DPS claimed by M/s.PTC. Since the present petition is filed under Section 142 of the Electricity Act, 2003 for none compliance of orders/directions, we don't intend into go into the details and form any specific opinion on the amount. However, PTC & GRIDCO may consider 1.02.2012, the date on which the order dated 19.05.2011 in Case Nos. 17 and 24 of 2011 reached its finality as cut off date to raise the bills by PTC and regarding assessment of DPS if not paid within the time period stipulated.

Further, as seen, the PSA has enough provisions to address such disagreements and need to be adopted by M/s GRIDCO Ltd. & M/s PTC.

7. Summarizing the above, we conclude that -

- (a) Since M/s GRIDCO Ltd. has partially complied with orders mentioned in the petition and, therefore, there is no need to invoke the provision u/S. 142 of the Electricity Act, 2003 at present since the benefit of doubt on DPS goes in favour of GRIDCO.
- (b) DPS is a part of payment as agreed by the parties herein under PSA executed between them and therefore, the same shall be payable by M/s GRIDCO Ltd. with appropriate quantification.

Since the present petition is under Section 142 of the Electricity Act, 2003, we do not intend to form any opinion on the amount of DPS.

- (c) The amount of DPS shall be settled through reconciliation for which M/s. GRIDCO Ltd. shall take the lead. M/s.PTC shall consider the financial condition of M/s GRIDCO Ltd. to arrive at a practical solution considering liquidity position. The reconciliation process shall be completed within a period of one month from the date of this order. Payment of DPS shall be made to M/s PTC by M/s GRIDCO Ltd. within 15 days of acceptance of reconciliation amount by both the parties in complete shape.

8. With the above observations the case is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson