

**ODISHA ELECTRICITY REGULATORY COMMISSION  
PLOT NO. 4, CHUNOKOLI, SHAILASHREE VIHAR,  
CHANDRASEKHARPUR,  
BHUBANESWAR-751021**

\*\*\*\*\*

**Present: Shri A. K. Das, Member  
Shri S. K. Parhi, Member**

**Case No. 12/2015**

M/s. Jindal Stainless Limited, Kalinga Nagar, Jajpur ..... Petitioner  
Vrs.  
The Executive Engineer (Elect.), Jajpur Road Electrical Division, NESCO Utility, Odisha  
..... Respondent

**In the matter of: An application under Sec. 142 of the Electricity Act, 2003 for non Compliance  
of OERC Order in Case No. 92/2013& 3/2014 dt.20.02.2015.**

**Case No. 14/2015**

M/s Jindal Stainless Limited, Kalinga Nagar, Jajpur ..... Petitioner  
Vrs.  
The Executive Engineer (Elect.), Jajpur Road Electrical Division, NESCO Utility, Odisha  
..... Respondent

**In the matter of: An application under Sec. 86(f) & (k) of the Electricity Act, 2003 for  
challenging the action taken by NESCO to execute agreement under  
Large Industry category, when the applicant is a Captive generating  
Plant coming under the category of “Industries owning Generating  
Station and captive Plant availing Emergency Supply” as per Regulation  
80(15) of OERC Distribution (Condition of Supply) Code, 2004.**

For Petitioner: Shri B. K. Patnaik, Advocate on behalf of M/s. JSL, Shri R. K. Sharma, DGM  
(Power) and Shri Rajesh Prasad Panigrahi of M/s. JSL are present

For Respondents: Shri B K Sahu, GM (Elct.) & Ms. Malancha Ghose, AGM (RA), NESCO  
Utility are present.

**Date of Hearing: 01.08.2017**

**Date of Order:26.02.2018**

**ORDER**

M/s. Jindal Stainless Ltd. (JSL) is having an integrated Steel manufacturing plant at Kalinga Nagar Industrial Complex, Danagadi, Jajpur Road in NESCO Utility area of supply and was availing power from NESCO Utility w.e.f. 01.09.2005 under large industry tariff category. After commissioning of its CGP (2x125MW), M/s. JSL has executed an agreement with NESCO Utility on 1.7.2008 for a period of two years under ‘Emergency supply to CGP’ category for a demand up to 50 MW. After expiry, the agreement was renewed on 13.11.2010 for a further period of two years retrospectively from the effective date 01.07.2010 upto 30.06.2012. As per the special clauses of the agreement, JSL will take supply upto a demand of 50MW (as allowed by OPTCL) but not exceeding 30MU per

annum with a cap of 4MU in one month. In case the drawl of JSL exceeds 4MU in any month, then energy bill for that month will be done on normal Large Industrial tariff with contract demand 50MW. Therefore, the M/s. JSL is a consumer under the category of emergency supply to CGP coming under Regulation 80 (15) of OERC Supply Code, 2004 and has been paying tariff as per the bill for “Emergency Supply to CGP”.

2. NESCO started raising bills to M/s. JSL on the basis of LI tariff category in the month of September, 2012 with arrear bills from April, 2012 and issued disconnection notice on 29.09.2012, although JSL has not violated any condition of supply code. Being aggrieved by the above decision of NESCO, the Petitioner moved GRF, Jajpur Road and the GRF decided the issue in favour of NESCO Utility. Being aggrieved, M/s.JSL moved to the Ombudsman-II, Bhubaneswar.
3. The Ombudsman-II initially stayed the disconnection notice issued by NESCO 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 metered / calculated data and the terms of the agreement executed between the parties. The Ombudsman 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. In its order, Ombudsman-II had directed that

*“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.”*

4. NESCO has again served a disconnection notice to M/s. JSL on 17.12.2013 stating that the stay on the earlier disconnection notice has been vacated by Ombudsman-II. Thereafter, M/s. JSL had approached to the Commission in u/Sec. 142 of the Electricity Act, 2003 for non-compliance of the order dated 22.11.2013 of the Ombudsman-II by NESCO Utility, which was registered in Case No. 92/2013. Further, M/s. JSL had also approached to the Commission u/S. 86 (1) (f) & (k) of the Electricity Act, 2003, challenging the action of NESCO Utility, not renewing the agreement under emergency power supply category basing on the above order of the Ombudsman-II, which was registered under Case No.

03/2014. The Commission had heard both the cases simultaneously and order issued on dated 20.02.2015 as mentioned below:

- (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.*

- 5. Now, M/s. JSL in the present petition had come to the Commission under Section 142 of the Electricity Act, 2003 for non-compliance of Commission's order dated 20.02.2015 by the NESCO Utility, which was registered as case no. 12 of 2015. Similarly another case was filed by M/s JSL challenging the action taken by NESCO to execute agreement under Large Industry category, when the applicant is a Captive generating Plant coming under the category of "Industries owning Generating Station and captive Plant availing Emergency Supply" as per Regulation 80(15) of OERC Distribution (Condition of Supply) Code, 2004 which was registered as case no. 14 of 2015.

Since the matter was similar in nature, the Commission heard the matter analogously. The filings made by the parties are taken on record.

- 6. The Commission in its interim order dated 04.07.2015 passed in Case Nos. 12 of 2015 had directed as follows:

*"7. NESCO Utility is also directed to provide all relevant information for classification of the Petitioner unit as large industry including dump report of the meters within seven days of issue of this order. The Petitioner is directed to furnish reply/ comments on the said report within seven days thereafter with a copy to the Commission.*

*8. After compliance of the above direction the Commission may send a fact finding expert team if required for ascertaining the proper classification of the industry."*

- 7. Based on the request of the Parties, the Commission has decided to send a fact finding committee to enquire into the proper classification of the industry for the past period. The fact finding team has submitted their report to the commission and the observation of the team as follows:

- a. *The team discussed the matter in detail with the DGM (O&M) in charge of the Grid Sub-station at Duburi and their officials on duty. It is observed that M/s. JSL is drawing power from 400/220 KV Grid sub-station of OPTCL at Duburi through two numbers of 220 KV feeders. The energy drawal is being recorded in a summation meter installed on 08.12.2015 and billing is being made at present based on the readings of this meter. Further individual meters, based on the reading of which billing was being made earlier i.e. prior to December, 2015 still exist in each feeder. Data/information regarding SMD of the drawal by M/s. JSL through these two feeders was not available at Duburi grid sub-station records. At M/s. JSL switchyard control room, drawal is being recorded through individual meters in both the feeders without any summation meter. Thereafter, we had a detailed discussion with the concerned officials of M/s. JSL and NESCO Utility in the office chamber of SE, Jajpur Road Electrical Circle. The views of both the parties during the discussion are taken into record.*
- b. *The representative M/s. JSL stated that the emergency power supply agreement was neither terminated nor renewed by NESCO Utility and bills were raised considering M/s. JSL as large industry having CD of 55.55 MVA without any regulatory provision. Hence, the emergency power supply agreement has continued till July, 2015 and from August, 2015, only the new agreement under LI category came into existence. The consumer meter was installed on 08.12.2015 which was the effective date of actual and correct billing under LI category. M/s. JSL has never violated the terms and conditions of emergency power supply agreement.*
- c. *Representatives of NESCO Utility have stated that the bills of the consumer have been revised up to June, 2012 based on the order of the Ombudsman-II. In compliance to the directions of the Commission, the utility has submitted all relevant documents to establish that the drawal pattern of the consumer is contradicting Regulation 80 (15) of OERC Distribution (Conditions of Supply) Code, 2004, where the category industry owning generating station/Captive Power Plant (CPP) availability for emergency supply is provided. As per drawal pattern of the consumers it comes under large industry. The utility stated that the Commission shall issue directions for regularization of the billing period from July, 2012 to July, 2015 inviting reference to the point 8 of order dated 4.07.2015 of OERC.*
- d. *From the submissions of both the parties we observe that the agreement for "Emergency supply to CGP" was valid till 30.06.2012. After the expiry of the said agreement, power supply to M/s. JSL has been continued without any valid agreement. Both the parties have not initiated any action for renewal of agreement or termination of the agreement. However, a fresh agreement was executed on 21.08.2015 between the parties under large industry category, effective from 01.08.2015 with a CD of 12 MVA.*
- e. *As per the order of the Ombudsman/Commission, NESCO Utility has revised the energy bill up to 30.06.2012 as per the previous agreement for emergency power supply. Both the parties are not having any dispute as far as energy charge is concerned. Since there is no valid agreement from July, 2012 to July, 2015, the dispute on billing was raised regarding the classification of consumer category. A fresh agreement was executed under LI Category which is effective from August, 2015.*
- f. *In this connection, GRIDCO Limited was asked to submit the data/information of month wise SMD for the drawal by M/s. JSL through both the feeders for the period from April, 2012 to 8<sup>th</sup> December, 2015 with time synchronisation. We analyse the said data received from GRIDCO Energy Billing Centre along with the submission/views of NESCO Utility and M/s. JSL. As per the OERC Distribution*

*(Condition of Supply) Code, 2004 the category of supply depends upon the nature & purpose of supply. As per Regulation 80 (15), the emergency power supply to a CGP is limited to survival requirement/start-up of the unit in the event of failure of their generating capacity. But as far as the drawal pattern of the M/s. JSL is concerned, it is on regular basis not limited to its survival requirement. We are also of the same opinion in line with the findings/ observations of the Ombudsman that the nature and purpose of power supply is contradicting to the recorded/calculated data of the meter and the terms of the agreement so made between the parties. Further, both the parties have not followed the law correctly in taking appropriate steps for execution of fresh agreement after the period of agreement is over.*

- g. *In the instant case, since the power has been drawn by M/s. JSL on continuous basis and inferred to be used as motive force for its industrial production, the category of the supply may not be classified under the category of “industries owning generating stations and captive power plants availing emergency supply only”. However, it could be classified under the category of “large industry”, but there was no valid agreement exists between the parties during the disputed period for consideration of the contract demand for billing purpose and also no summation meter was available for ascertaining SMD and power factor of the power supply. In view of the above, any one of the following options may be considered by the Commission for resolution of the dispute between the parties.*

- i. *Deemed continuance of the old agreement of emergency supply till July, 2015.*

*or*

- ii. *The new agreement which was effective from August, 2015 may have retrospective effect from July, 2012.*

*or*

- iii. *The disputed period may be treated as drawal under LI category considering the SMD as submitted by GRIDCO.*

*or*

- iv. *Any other option as deemed fit and decided by the Commission.*

8. The Commission heard the matter at length on 01.08.2017 & replies of the parties and report of fact finding team are taken on record.
9. The learned counsel appearing on behalf of the petitioner, M/s. JSL has stated that they have taken all steps in all stages requesting the respondents to execute the agreement as per order of the Commission. The steps taken by M/s. JSL vis-à-vis NESCO Utility are submitted in the written note of submission on dated 12.07.2017. The order of the Ombudsman-II has reached its finality since that order has not be challenged in any Fora and hence accepted by both the parties. So the same order may be continued for the disputed period as suggested by the enquiry team in option one. The representative of NESCO Utility stated that from the document submitted by the petitioner, it is evident that the respondent has made a number of communications to the petitioner for executing agreement under large industry category. There was no delay by respondents.

10. From the submissions above before us, we observe that an agreement existed between parties to this issue under the category of “Emergency Supply to CGP” as per supply Regulations, 2004, Regulations 80(15). The said agreement was valid upto 30.06.2012. In September 2012, the licensee NESCO served a bill on the petitioner reclassifying the petitioner in the category of the Large Industries as per Regulations 80(10) of the Supply Regulations retrospectively from April 2012, observing that the drawal pattern of the petitioner was not occasional as should be in case of “emergency supply” and also served a notice subsequently on the petitioner for disconnection of power supply due to non-payment of dues arising out of said bill.

Aggrieved by this action of respondent NESCO, Petitioner approached GRF and thereafter the Ombudsman II. The later provided interim relief to the petitioner on 08.11.2012 restraining the Utility on disconnection and subsequently decided the matter on 22.11.2013 directing that –

*“for renewal of agreement both parties should conclude to a tariff category under Regulations in force, basing on the nature and purpose of power supply”.*

11. The Respondent submitted that the Petitioner requested for renewal of the agreement with respondent under ‘Emergency Supply Category’ from 04.09.2012 onwards.
12. The Petitioner sought intervention of Commission on 19.12.2013 u/s 142 for non-compliance of Ombudsman’s direction and also moved the Commission on 21.01.2014 u/s. 86(f) & (k) of the Act challenging the suo motu action of NESCO Utility which had included its industry under ‘Large Industry category’. The said petitions were disposed of by the Commission on 20.02.2015 with the direction to comply with the order of Ombudsman II as it has reached finality. While the matter was pending before the Commission the supply of power to the Petitioner’s industry was continuing without any interruption.
13. We observe that the Regulations 82 of the Supply Regulations 2004 clearly lays the manner in which the classification of category of an existing consumer can be altered.

The relevant portion of the Regulation is quoted below:

**“Reclassification of a consumer”**

82. *If it is found that a consumer has been classified in a particular category erroneously or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category or any order of reduction or enhancement of contract demand has been obtained, the engineer may reclassify him under appropriate category after issuing notice to him to execute a fresh agreement on the basis of the altered classification or modified contract demand. If the consumer does not take steps within the time indicated in the notice to execute the fresh agreement, the engineer may, after issuing a clear seven days show*

*cause notice and after considering his explanation, if any, may disconnect the supply of power.”*

14. Thus the consumer is at liberty to choose the classification of category initially, consistent with the Regulation depending upon his own requirement and purpose. If the engineer of the licensee subsequently finds from observations/ records that the initially agreed category requires alteration / modification, he has to proceed in the manner provided in the Regulation 82 of the Supply Code initiating the action by appropriate notice to the consumer.
15. We observe that the licensee has unilaterally proceeded on to bill the consumer from April, 2012 onwards in another category during currency of the prevailing agreement without following the procedure mentioned in the Regulations. The existing agreement at that point of time was not renewed due to disagreements over the category till 01.08.2015.  
  
We are of the view that, once a procedure is prescribed for some actions in the statute, it has to be in that way only; not in the other way.
16. However, in accordance with the regulations, the final notice to change the category appears to have been issued to the petitioner-consumer by the licensee much later on 30.04.2015 and the agreement has been signed in the new agreed category w.e.f. 01.08.2015.
17. Therefore, considering all the factors mentioned above, we are of the opinion, that the transaction for the period from 01.07.2012 to 31.07.2015 should fall in the category of “Emergency Supply to CGP” under Regulation 80(15) of the Supply Code which existed on 30.06.2012.
18. We direct that the NESCO Utility shall raise bills on the petitioner immediately within 15 (fifteen) days of issue of this order in the category mentioned at Clause 17 above. Interim payments ordered by Commission and paid by petitioner shall be suitably adjusted in the bill. NESCO Utility is at liberty to charge DPS after expiry of the “due date of payment”, if payment was not received in time.
19. With the above observations and directions, the present petition is disposed of.

Sd/-  
**(S. K. Parhi)**  
**Member**

Sd/-  
**(A. K. Das)**  
**Member**