

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. 18/2015

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|--------------------------|-------|------------|
| M/s. Krishna Ice Factory | | Petitioner |
| Vrs. | | |
| E.E.(Elect.), NESCO, BED | | Respondent |

In the matter of: **An application under S.142 of the Electricity Act, 2003 for non-compliance of Order dated 01.12.2014 of the Appellate Authority-cum-Electrical Inspector (T&D), Balasore passed in Case No. AAC 03 of 2012-13.**

For Petitioner: Shri Rabin Kishore Behera authorised representative of M/s. Krishna Ice Factory.

For Respondent: Shri Srikanta Kumar Padhi, Executive Engineer (Elect.), BED, Balasore, NESCO Utility.

ORDER

Date of Order:21.01.2016

The present petitioner M/S. Krishna Ice factory, Balaramgadi, Chandipur, Balasore has filed this application under Section 142 of the Electricity Act, 2003 due to non-compliance of the order of the Appellate Authority- cum-Electrical Inspector (T&D), Balasore passed in Case No.AAC-3 of 2012-13 by NESCO.

2. The Petitioner is large industrial consumer having CD of 124 KVA. When the drawl of the Petitioner went above the CD in several occasions, the Respondent NESCO intimated him to enhance the CD as per OERC Supply Code, 2004. As per the instruction of NESCO the Petitioner on 05.11.2012 applied for enhancement of his CD to the appropriate authority. When no action was taken by the Respondent, the Petitioner moved GRF, Balasore who directed NESCO to enhance the contract demand as expeditiously as possible after submission of necessary documents by the Petitioner. But surprisingly the NESCO authority did not act on the application of the Petitioner. Finding no other way the Petitioner appealed before Ombudsman-II who also directed NESCO to implement the order of the GRF.
3. When the matter stood thus the NESCO authority issued a Show Cause Notice on 12.10.2012 along with a provisional assessment order under Section 126 of the Electricity Act,2003 for overdrawal of power during August, 2012. Though the Petitioner filed his

reply to the said show cause notice, the Assessment Officer confirmed the provisional assessment of Rs.88,127.37/- on 07.12.2012.

4. Being aggrieved by the said final assessment order of the Assessing Officer, the petitioner had filed an appeal bearing AAC No. 03/2012 under Section 127 of the Electricity Act, 2003 before the Appellate Authority by depositing 50% of the penal amount with the respondent. The said appeal was disposed of by the Appellate Authority by setting aside the above penal amount and the respondent was directed to refund the said 50% amount deposited by the petitioner. As the said order of the Appellate Authority was not complied by the respondent, the petitioner has filed the above case before the OERC for implementation as well as seeking direction of the Commission to the respondent to enhance the contract demand of the petitioner's unit from the date of its application as per the OERC (Conditions of Supply) Code, 2004. During pendency of the case with the Commission, the respondent NESCO has moved the Hon'ble High Court of Orissa challenging the order of the Appellate Authority passed u/S. 127 of the Act in W.P.(C). No. 10739 of 2015. The Hon'ble Court vide their order dated 12.11.2015 has set aside the order of the Appellate Authority in Case No. AAC No. 03 of 2012 and remanded the matter back stating that the order of Electrical Inspector suffers from illegality and irregularities and directed the appropriate authority for reconsideration of the same on the pleadings made in the written statement by affording opportunity of hearing to all the parties.
5. In the meantime the petitioner was directed by NESCO Utility to enhance contract demand from 124KVA to 175KVA vide permission letter No. FC/CO/712/1773 dated 09.02.2015 by following the terms and conditions of the OERC Distribution (Conditions of Supply) Code, 2004. During pendency of the writ petition being W.P.(C). No. 10739 of 2015 and the above noted case with the Commission for disposal and the application for enhancement of the contract demand of the unit of the petitioner, the respondent for the self same cause as again issued a show-cause notice dated 26.09.2015 along with a provisional assessment order dated 26.09.2015 for un-authorized consumption of power to the quantum of 99121 units amounting to a sum of Rs. 4,45,449.78/- for over drawal of power in excess of 120% of the contract demand during the month of June to August, 2015. In the above circumstances, the petitioner has challenged the above provisional assessment order dated 26.09.2015 in W.P.(C). No. 19355 of 2015 before the Hon'ble High Court of Orissa and the said Hon'ble Court has disposed of the said writ petition with the following directions:-

“x x x x x x x x .

“ Considering the contentions raised by the learned counsel for the petitioner, this court is not inclined to entertain this writ petition. At this stage when the petition for implementation of the order passed by the appellate authority is pending before the OERC for consideration, learned counsel for the petitioner seeks liberty to approach the said forum. Accordingly liberty is granted to the petitioner to move before the appropriate forum. If such application is filed, appropriate forum shall consider the same in accordance with law giving opportunity of hearing to the parties. With the above observation, the Writ Petition is disposed of.”

6. The Respondent in his written reply has submitted that the Order of the Appellate Authority passed under Section 127 of the Electricity Act, 2003 pertaining to final assessment order under Section 126 of the said Act has been set-aside by the Hon’ble High Court of Orissa in W.P.(C). No. 10739 of 2015 vide their Order dated 12.11.2015 by remitting the matter back to the appropriate authority for re- consideration of the same on the pleadings made in the written statement affording opportunity of hearing to all the parties, therefore the proceeding under S.142 pending with the Commission is not maintainable and liable to be dismissed.
7. Heard all the parties. Respondent- NESCO Utility, not being satisfied with the decision of Appellate Authority had approached the Hon’ble High Court of Orissa. Hon’ble High Court, in its order on 12.11.2015 in WP(C) No. 10739 of 2015 has directed the Appellate Authority to reconsider the decision on the pleadings made in the written statement by affording opportunity of hearing to all parties.
8. The petitioner is at liberty to approach the Appellate Authority for further consideration of its submission. Therefore, we are not inclined to pass any orders u/S 142 on this ground raised by the petitioner.
9. During course of hearing, it was brought to our notice, that, no decision on enhancement of load was taken by the Respondent for nearly two and half years (i.e., from 05.11.2012 to 09.02.2015). The reason for such delay has not been properly explained by the respondent in the counter. Therefore, COO, NESCO Utility is directed to fix up responsibility for such lapses after due enquiry and intimate the same to the Commission.
10. It was submitted during the hearing that due to a second provisional assessment order by NESCO Utility, the petitioner had already taken the shelter of law by filing writ petition in Hon’ble High Court of Orissa. The Hon’ble High Court of Orissa in consideration of the

said appeal remanded the matter in its order on 02.11.2015 in W.P.(C) No. 19355 of 2015 to the Commission for appropriate decision.

11. We, therefore, direct that the assessment officer shall pass a final order in the second assessment u/S. 126 of the Act within 30 days of passing of this order. While doing so he will take into consideration the direction of Hon'ble High Court, the request of the petitioner to enhance the load and final decision of the Appellate Authority in the first assessment order after remand from the Hon'ble High Court.
12. With the above direction the case is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson