

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

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

Case No. 07/2016

M/s. REI Power Bazaar Pvt. Ltd.

.....

Petitioner

Vrs.

GRIDCO Ltd. & Others

.....

Respondents

In the matter of: **An application under Ss.66 & 86(1) (k) of the Electricity Act,2003 seeking permission of the Commission for setting up and operation of Intra-State power Exchange and development of electricity market in Odisha.**

For Petitioner: Shri Anirban Mandal, Asst. Manager (Legal), M/s. REI Power Bazar Pvt. Limited,

For Respondents: Shri L. N. Mohapatra, Advocate on behalf of GRIDCO Limited & OPTCL, Shri G. S. Panigrahi, DGM (Law), GRIDCO Ltd., Shri B. P. Mishra, CGM (RT&C), OPTCL, Shri C.R.Swain, DGM (Law), Shri S.K.Harichandan, AGM (Law), CESU, Shri K. C. Nanda, DGM (Fin.), WESCO Utility, Shri B. K. Sahu, GM , NESCO Utility, Shri Oisik Mishra (Regional Manager), M/s. IEX Limited, Shri Gaurav Maheswari, Manager, M/s. IEX Limited, Ms. Sonali Pattnaik, Dy. Manager (Legal), DoE, GoO and Shri P. S. Sahu, Sr. GM (PS), SLDC. Nobody is present on behalf of SOUTHCO Utility.

Date of Hearing: 18.07.2017

Date of Order:03.02.2018

ORDER

M/s. REI Power Bazar Limited, the petitioner in this case is a Private Limited Company under Companies Act, 2013 with its registered office at Mahalaxmi Road, Gandhi Nagar, Lower Parel, Mumbai – 400013. The Petitioner seeks permission of the Commission to set up an intra-State power exchange in the State of Odisha under Section 66 of Electricity Act, 2003.

2. The petitioner submits that the development of power market has to be carried out by the appropriate Commission in accordance with the guidelines provided under the National Electricity Policy which states as follows:

“5.7 Competition aimed at consumer benefit

5.7.1 (d) development of power market would need to be undertaken by the appropriate Commission in consultation with all concerned.

5.7.1 (f) Enabling regulations for inter and intra State trading and also regulations on power exchange shall be notified by the appropriate Commissions within six months.”

The Petitioner has access to vast pool of professional having sound knowledge and long experience in the areas of Electricity Act, 2003, Indian Electricity Grid Code and other allied areas and therefore, proposes to set up a intra-State power exchange in the State of Odisha and request the Commission to grant him permission for setting up of the same under Section 86 (1) (k) read with Section 66 of the Electricity Act, 2003.

3. Considering the nature of the Petition all the DISCOMs of the State, GRIDCO and Govt. of Odisha were issued notice to keep their views on this matter during the hearing. It was first heard on 20.09.2016 where Indian Energy Exchange Ltd. (IEX) filed an application seeking intervention in the proceeding. The intervention petition was allowed by the Commission and the Petitioner was directed to publish a public notice on this matter in the newspaper seeking objection /suggestion from the public. As per the direction of the Commission the public notice was published by the Petitioner in the newspaper on 29.04.2017 and the matter was again heard by the Commission on 09.05.2017.
4. During the hearing, the Commission raised two points to be answered by the Petitioner as follows:
 - a. Whether power exchange registered under CERC Power Market Regulation, 2010 cannot handle the requirement of Intra -State trading requirement.
 - b. Whether Intra-State power exchange has been allowed in any other State.

SLDC was also impleaded as a party to this proceeding considering its role in the power system of the State.

5. To the above queries of the Commission, the Petitioner M/s. REI Power Bazar Pvt. Ltd. stated that CERC vide their order dated 27.05.2008 and 31.08.2007 had granted in principle approval to Power Exchange of India Ltd. (PXIL) and Indian Energy Exchange (IEX) for establishing power exchanges at the inter-State level. CERC vide their order dated 19.01.2010 had also notified the Power Market Regulation, 2010. Under such Regulation only inter-State trade of electricity through National Power Exchange like IEX and PXIL can be conducted and no intra-State trade of electricity can take place. The products or contracts specified under CERC (Power Market), Regulations, 2010 is of inter-State in

nature. Therefore, the Power Exchanges at the inter-State level have no role to play for intra-State trading of electricity.

On the next query of the Commission the Petitioner replied that they have filed similar petition before various State Electricity Regulatory Commission which are under consideration by respective Commissions.

6. Respondent M/s. WESCO Utility stated that the petition in its present form is not maintainable in the eyes of the law due to absence of enabling provision for construction and development of intra-State power exchange. The present Petitioner had filed similar petition before State Regulatory Commissions of Maharashtra, Haryana, Kerala and Rajasthan States. The Kerala and Rajasthan Commission have dismissed the petition after conducting exhaustive hearing. The State Commission of Kerala has dismissed the petition due to failure of the Petitioner to provide the said Commission the detailed project report and other relevant document desired by the Commission. The Rajasthan Commission has dismissed the petition on the ground of non-requirement of a intra-State power exchange in view of functioning of two power exchanges at national level which also deal with intra-State trading. M/s. WESCO Utility has further submitted that the State of Odisha has adopted the single buyer model for procurement of electricity from different generators and consequential sale of the electricity to DISCOMs. GRIDCO acts as deemed trader of electricity and operates both as intra-State and inter-State trader. Under the present context many industries are meeting their power requirement through inter-State and intra-State open access availing IEX platform. The Petitioner has not clarified under which manner it would be successful in providing cheap power to the consumer of the State than the present rate. In addition to that the Petitioner has not submitted the detailed project report for effective implementation of the power exchange. Since CGPs of the State are selling their surplus power through IEX, there is no requirement for setting up of a intra-State power exchange. Moreover, the State Commission has not framed any regulation for regulating intra-State trading market, therefore, the prayer of the Petitioner being pre-mature, is liable to be dismissed.
7. Other Respondents DISCOM, CESU submitted that the Petitioner has filed the present petition under Section 66 of the Electricity Act, 2003 which states as follows:

“66. The appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in Section in this regard.

Section 2 (62) “Specified” means specified by regulations made by the Appropriate Commission or the Authority as the case may be, under this Act.”

Since the present Commission has not framed any Regulation as specified under Section 66 of the Act for establishment and functioning of Intra-State power exchange in Odisha, the present application cannot be entertained in its present form. Not only the Odisha Commission but none of the State Commissions has framed regulation for establishment of intra-State power exchange. It implies that the prevailing situation is not so far not ripe enough for establishment of intra-State power exchange in the State of Odisha.

8. Respondent M/s. OPTCL stated that the similar applications of the present Petitioner before Rajasthan, Maharashtra, Haryana, Andhra Pradesh, Telengana etc. are either under consideration of respective Commission or have been dismissed or rejected by the concerned Regulatory Commission. The Rajasthan Commission dismissed the petition stating that time is not ripe for grant of permission for establishment such intra-state platform when two national power exchanges are already existing in the country. The Madhya Pradesh Regulatory Commission have dismissed the petition stating that they do not have relevant regulation for setting up of the power exchange.
9. The Respondent OPTCL further stated that the applicant has not stated the compelling need to establish an intra-State power exchange. The present Commission also do not have a regulation in this regard. The applicant company is at nascent stage and do not have prior experience in this regard. In view of the above the application is liable for rejection since it is a premature one.
10. The intervener M/s. IEX stated that they are registered as public limited company under Companies Act, 1956 and have been granted permission to set up power exchange and operate the same by CERC vide their order dated June 9, 2008. They are operating in accordance with CERC (Power Market) Regulations, 2010. It submits that with mere 3% of the total generation presently being traded through the National Power Exchanges the logic or rationale to set up State level power exchanges does not hold much ground. Creating Intra-State exchange platform at this stage of the power market development will lead to fragmentation of the existing market affecting in the liquidity and price discovery and will not yield any tangible gains at the State level. As per National Electricity Policy, 2005 appropriate regulation should be in place before setting up of intra-State power exchange. The CERC has made detailed guidelines for grant of permission for setting up and operation of power exchange and also has made power market regulation after public consultation. The Commission should first create a level playing field by notification of appropriate

regulation and then consider applications interested parties according to such regulation. Though the applicant stated that they have access to professionals with vast experience and knowledge in electricity sector, no material to this effect has been placed on record. Power exchanges are already operating at inter-State level and providing collective transaction in competitive environment and thus superimposing another platform by way of intra-State exchange is unlikely to bring any further value addition. Mere statement of the Petitioner is not sufficient. The intervener further submitted that the exchange stands as counter party to both buyer and seller which needs certain net-worth of the applicant which is required to be ascertained in this case. Therefore, the present application should be rejected since it does not fall under the present regulatory and legal framework.

11. The Petitioner has submitted its rejoinder to the objections of its application. It stated that OTC platform proposed by them is a fully transparent bid matching platform where buyer and sellers are aware of the details of each other. The objection of IEX is solely meant to protect its monopoly and anti-competitive in nature and against the objective of the Electricity Act, 2003. Creation of regulatory framework is not a condition precedent to the establishment of an intra-State power market in the State of Odisha. The Petitioner further stated that establishment of an intra-State over-the-counter (OTC) platform would provide another opportunity to market participants like generators, consumers and distribution licensee etc. for trading of electricity in a fully transparent and competitive environment. The applicant is always ready to submit any information relating to this matter if desired by the Commission. The Petitioner further brought to our notice a decision of Hon'ble Supreme Court in the case of Surinder Singh Vrs. Central Govt. & ors. in CA No. 2062/1972 dated 26.09.1986 where Hon'ble Court has held that framing of regulation under Section 79 (h) of the Electricity Supply Act, 1948 cannot be a condition precedent for fixing grid tariff. Therefore, the Petitioner has prayed that their application can be dealt with without a regulation in this regard. The Petitioner has submitted that in case of IEX the bidding is done at State periphery wherein the scheduling at dispatch of electricity is within the ambit of regional load despatch centre whereas it proposes a platform which provides for intra-State trading at zero transaction cost wherein the generators and the end consumers are connected to the State grid and do not pay PoC charges and losses etc. The Petitioner shall file a detailed report regarding power market of Odisha and also how the Petitioner wants to establish intra-State power exchange to serve best interest of the generators and consumers.
12. We have heard the arguments from both the sides of the issue.

The petitioner intends to establish a trading platform for intra state transactions in accordance with the Section 66 and Section 86(1)(k) of Electricity Act and seeks permission for this from the Commission.

13. Section 66 of the Electricity Act 2003 provides as under.

“The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by National Electricity Policy referred to in Section 3 in this regard.”

We agree with the Respondent CESU and others that under Section 2(62) “specified” means specified by regulations made by Appropriate Commission or the Authority as the case may be, under this Act.

Therefore prima facie a regulation is to be in place by the State Commission before any permission is granted to petitioner to remove ambiguity, uncertainty, discrimination and dispute among all concerned as provided under the Act.

14. “The National Electricity Policy” of Govt. of India framed on 12.02.2005 under Section 3 of the Electricity Act states as follows:

“5.7 Competition Aimed At Consumer Benefits

xxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

(d) Development of power market would need to be undertaken by Appropriate Commission in consultation with all concerned.

(e) The Central Commission and the State Commissions are empowered to make regulations u/s 178 and section 181 of the Act respectively. These regulations will ensure implementation of various provisions of the Act regarding encouragement to competition and also to consumer protection. The Regulatory Commissions are advised to notify various regulations expeditiously.

(f) Enabling regulations for inter and intra state trading and also regulations on power exchange shall be notified by the appropriate commissions within six months.

15. The regulations shall, inter alia, provide the qualification, net worth, rights and obligations of stakeholders within the boundary, transaction at boundary, integration with inter-state exchange consequence of disobedience and default and many other parameters required for healthy operation of the OTC platform and intra state exchanges.
16. Although most of the regulations to facilitate trading of electricity in other ways like open access, wheeling etc have been framed by the Commission, the regulations on intra state trading platform is yet to be formed primarily because of absence of sufficient players in the field, stagnation in energy transactions in the state over the past years, absence of adequate

experience from best practices in other states, clarity on transaction between exchange and stakeholders and interstate exchanges, lack of growth in high end consumers etc.

17. We feel that the steps should be taken in the manner the law had specified and not else. We take the reference from the decision of Hon'ble Supreme Court cited in AIR 1975 SC 915 as follows:

“(B) Interpretation of statutes – intention attributed to legislature – imperative or directory – non compliance – Effect.

“No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an impact nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope.

Where a power is given to do certain things in a certain way, the thing must be done in that way or not at all and other methods of performance are necessary forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do in any other.”

18. To abide by law, the commission has to proceed in the manner specified under the law. Even though, a number of information and commitments have been provided by the petitioner, we observe them not to be to our ‘satisfaction and complete’ in absence of appropriate regulations and cannot accept in its present form and transparent manner. Also the argument citing reference to the order of Hon'ble Supreme Court is in a different context than this. We opine accordingly.
19. We also do not agree with other respondents view that the petitioner should not be considered because of presence of some other agencies in the field. The intended provision of the Act is to promote and encourage competition for better efficiency and best service to consumers and this needs to be honoured.
20. Therefore keeping in view, the request of the petitioner, submissions of respondent(s) and provision of law, we feel that the Commission need to frame an appropriate regulation in his regard under section 181 after consulting all stakeholders within the mandated time frame of the National Electricity Policy. We direct the registry to proceed accordingly.
21. With this observation the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member