

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751 021**

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

**Case No. 34/2016**

M/s. Sita Cement Limited	.....	Petitioner
Vrs.		
G.M (Comm.), WESCO Utility & Others	.....	Respondents

**In the matter of: An application under S. 142 of the Electricity Act, 2003 for non-compliance of Order dated 02.06.2016 of the Ombudsman-II passed in C. R. Case No. Om (II) W-16 of 2015.**

**For Petitioner: Shri A. K. Sahani, authorized representative of M/s. Sita Cement Limited.**

**For Respondent: Shri Amaresh Chandra Bal, Asst. Manager (Law), WESCO Utility.**

**Order**

**Date of hearing: 22.11.2016**

**Date of order: 02.12.2016**

The petitioner is a large industrial consumer having contract demand of 300 KVA at 33 KV under Rajgangpur Electrical Division of WESCO Utility. It has filed the present case under Section 142 of the Electricity Act, 2003 for non-implementation of order dated 02.06.2016 of the Ombudsman-II passed in C.R.Case No. W-16 of 2015.

2. The fact of the case is as follows. The petitioner has applied for enhancement of its contract demand from 300 KVA to 450 KVA by depositing necessary processing fees with the Utility on 01.07.2013. Basing on the said application for load enhancement, the respondent had granted permission for enhancement of contract demand from 300 KVA to 450 KVA with certain terms and conditions on 07.10.2013 which was valid for 3 months from the date of according permission. As per the Petitioner the said permission letter was not received by him in time. Being ignorant of the said permission the Petitioner again on 12.05.2014 requested GM (Com.), WESCO for enhancement of the load. But when the Petitioner came to know about the permission letter issued by WESCO it again requested them to revalidate the same since three months had already elapsed in the meantime.
3. When the matter stood thus the DGM (Com.), WESCO vide his letter No. 765 dated 19.06.2014 communicated to the Petitioner that the permission letter issued to the

Petitioner on 07.10.2013 was cancelled as per Regulation 73 (3) of OERC Distribution (Condition of Supply) Code, 2004 as the Petitioner had an arrear outstanding to the tune of Rs.44,32,747.62 as a penalty for exceeding CD by 120%.

4. The Petitioner pointed out that such outstanding arrear amount is disputed one which had been stayed by Hon'ble High Court of Orissa vide their order in Misc. Case No. 19151/2014 arising out of WP(C) N0.19920/2014.
5. Being aggrieved by the above action of the respondent WESCO the Petitioner moved GRF, Rourkela vide Case No. 2/2015. The Learned GRF disposed of the matter on 27.06.2015 stating that since the matter was sub-judice before Hon'ble High Court they are not inclined to interfere in the same. The Petitioner stated that the Learned GRF had passed this order without application of mind since the case before them was not for arrear dues but for enhancement of CD.
6. As a consequence the Petitioner moved the Learned Ombudsman-II which in their office order No. 57(4) dated 02.06.2016 in C.R.Case No. W-16/2015 directed as follows:

***“From the above findings and records submitted by both the parties, this forum directs the respondent to enhance the contract demand of the consumer from 300 KVA to 450 KVA w.e.f. 12.5.2014 and intimate the petitioner within 30 days from the date of receipt of letter of acceptance from the petitioner and file compliance within 45 days to this Forum”.***

7. According to the above order of the Ombudsman-II, the petitioner has submitted its letter of acceptance of the order of the Ombudsman-II for implementation before the respondent on 06.06.2016 but the respondent has not implemented the same till date. Therefore, the petitioner has filed the above case u/Sec. 142 of the Electricity Act, 2003 for implementation of the said order of the Ombudsman-II passed in C.R.Case No. W-16/2015.
8. The representative of Respondent WESCO Utility has submitted that being aggrieved by the order dated 02.06.2016 of the Ombudsman-II passed in C.R.Case No. W-16/2015, the respondent has filed W.P.(C). NO. 11838/2016 along with an application for stay of operation of the said order of the Ombudsman-II before the Hon'ble High Court. The Hon'ble Court had issued notice on 19.07.2016 to the opp. Party (petitioner herein) and was fixed the matter two weeks after for further hearing with a direction to the petitioner herein to file their counter within this period as the petitioner has filed a caveat petition, apprehending stay of operation of the order of

the Ombudsman-II by the Hon'ble Court. The Hon'ble Court has been pleased to admit the matter for hearing on merit of the case for which the petitioner has been asked for to file their counter reply if any, thus, during the pendency of the writ petition and more particularly keeping in view of admission of the above aforesaid W.P.(C). No. 11838 of 2016 for hearing, the present proceeding may be kept in abeyance till final disposal of the writ petition by the Hon'ble Court.

9. The Respondent also submitted that the assessment order passed under Section 126 of the Electricity Act, 2003 for continuous overdrawal beyond 120% of CD though being stayed by the interim order of the Hon'ble High Court in W.P.(C). No. 19920 of 2014, it has not been completely quashed and thereby the penal amount of Rs.44,32,747.62/- is considered as arrears as per Reg. 73 (3) of the OERC Distribution (Conditions of Supply) Code, 2004 and re-validation of the enhancement of contract demand has been rightly denied to the petitioner herein.
10. After hearing the parties and perusal of the case records, we find that the writ petitions filed by both the Petitioner and the Respondent before the Hon'ble High Court of Orissa are on separate issues. The W.P.(C). No. 19920 of 2014 filed by the petitioner has arisen out of the final assessment order dated 11.3.2014 of Assessing Authority passed under S. 126 of the Electricity Act, 2003 in respect to the penal amount Rs. 44, 32, 747.62/- due to MD exceeding contract demand by 120% towards un-authorized use of power which has been stayed vide Misc. Case No. 19151 of 2014 by the Hon'ble Court. Whereas the Respondent has challenged the order of Ombudsman-II passed in CR Case No. W-16/2015 on the issue of enhancement of contract demand.
11. Even assuming the both the cases are related, still Hon'ble High Court has been pleased to not grant any stay of operation on the order of Ombudsman-II. Therefore, there was no bar on the part of the Respondent to implement the order of Ombudsman-II.
12. Therefore, we direct the Respondent WESCO Utility to implement the order of the Ombudsman-II passed in C. R. Case No. W-16/2015 and order No. 57(4) dated 02.06.2016 within two weeks from the date of passing of this order.
13. With the above observation, the case is disposed of.

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

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