

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

**Case No. 24/2017**

M/s. Bhubaneswar Diary (Consumer No. 305-LI) ..... Petitioner  
Vrs.  
The Executive Engineer (Elect.), BCDD-II CESU ..... Respondent

**In the matter of: An application under Section 142 of the Electricity Act, 2003 for non implementation of Order No. 394(5) dt.08.03.2017 of the Ombudsman – I passed in C.R. Case No. 91 of 2016.**

**Case No. 25/2017**

M/s. Bhubaneswar Diary (Consumer No. 29-LI) ..... Petitioner  
Vrs.  
The Executive Engineer (Elect.), BCDD-II CESU ..... Respondent

**In the matter of: An application under Section 142 of the Electricity Act, 2003 for non implementation of Order No. 395 (5) dt.08.03.2017 of the Ombudsman–I passed in C.R. Case No. 92 of 2016.**

For Petitioner: Shri A K Sahani, authorised representative for Petitioner.  
For Respondents: Shri Bani Bhusan Mohanty, DGM , CESU for respondent.

**Date of Hearing: 27.06.2017**

**Date of Order: 22.08.2017**

**ORDER**

The Plant Manager, M/s. Bhubaneswar Diary has filled two numbers of petitions for non-implementation of the order of Ombudsman-I vide C.R. Case No. 91 & 92 of 2016 dated 08.03.2017 which were registered as Case No. 24/2017 & 25/2017 respectively. The petitioner is availing two numbers of power connections from CESU billed at GPS tariff category with contract demand of 200 KVA & 900 KVA respectively and connected at 11 KV. The petitioner claimed that consequent upon amendment of Regulation 80(5) of the Distribution Code, the industry should have been billed under Allied Agro Industrial Activities (AAIA) as per amended Regulation- 80(5)(iii) of the OERC Distribution (Conditions of Supply) Code, 2004. The installation should have been reclassified accordingly with effect from the date of amendment of Regulation.

2. The petitioner prayed that the chilling plant for milk of its Diary industry was entitled to get the benefit of Allied Agro-Industrial Activities tariff. When this was not allowed by CESU the petitioner approached the GRF which did not accept his contention. Being aggrieved by the Order of the GRF, the petitioner approached Ombudsman-I.

3. The Ombudsman –I in its order dated 08.03.2017 in CC No. 91 of 2016 had directed that the petitioner should be classified as “Allied Agro Industrial Activities” tariff category as envisaged under the amended provisions of Regulation 80(5)(iii) of OERC Distribution (Conditions of Supply ) Code, 2004 with effect from 20.10.2011 i.e. from the date of power supply to the petitioner. Similarly in order dt 08.03.2017 in CC No. 92 of 2016, Ombudsman had also directed CESU to reclassify the petitioner as “Allied Agro Industrial Activities“ tariff category as envisaged under the amended provisions of Regulation 80(5)(iii) of OERC Distribution (Conditions of Supply) Code, 2004 with effect from 19.10.2009. When these orders of Ombudsman were not implemented by CESU the Petitioner has approached OERC under Section 142 of the Act.
4. The Respondent CESU has replied that the orders of the Ombudsman in both the cases are neither entertainable nor maintainable at this stage since those have been challenged in the Hon’ble High Court of Odisha vide Case No. WP(C) 10403/2017 & 10404/2017 by the Respondent. The Hon’ble High Court in its order dated 02.06.2017 has directed as follows:  
*“Mr. Dash, learned counsel for the petitioner submits that the matter is posted before the OERC on 09.06.2017 for filing of show cause and hearing. He undertakes to file show cause on the very day. In the event, the petitioner files show cause and prays for an adjournment for 15 days, the same shall be considered liberally by the OERC.”*
5. The respondent has filed its show cause reply on 09.06.2017 and has sought to drop the proceeding or to postpone the same till final disposal of W.P.(C). Nos. 10403 & 10404/2017 pending before the Hon’ble High Court of Orissa, Cuttack.
6. Keeping in mind, the orders of the Hon’ble High Court of Orissa, the Commission gave the Petitioner adequate time and posted the matter for hearing on 27.06.2017. Both the parties were heard analogously on that day. The views of the parties along with the order of Hon’ble High Court of Orissa in W.P.(C). No. 5840/2014 were also taken on record.
7. We observe that no stay has been granted by Hon’ble High of Orissa on the orders of Ombudsman. Therefore, in absence of any stay from Hon’ble High Court of Orissa on these issues, we direct the respondent to implement the orders of Ombudsman within thirty days from the issue of this order.
8. With above direction, the cases are disposed of.

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

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

Sd/-  
**(U. N. Behera)**  
Chairperson