

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

**Present: Shri U. N. Behera, Chairperson
 Shri A. K. Das, Member
 Shri S. K. Parhi, Member**

Case No. 71/2017

M/s. Prinik Steels Pvt. Ltd.	Petitioner
Vrs.		
E.E (Elect.), KED, Khurda, CESU	Respondent

In the matter of: An application under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 18.02.2017 of the Commission passed in Case No. 74/2007 and also Order dated 05.11.2007 of the Ombudsman(CZ) passed in C.R. Case No. OM(CZ)-60 of 2007.

For Petitioner: Shri Bikash Jena, Advocate.

For Respondent: Shri Manoj Kumar Das, E.E (Elect.), KED, Khurda, CESU.

ORDER

Date of hearing: 14.08.2018

Date of order: 09.04.2019

The petitioner M/s. Prinik Steels Ltd. has filed this petition against E.E (Elect.), KED, Khurda under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 18.02.2017 of the Commission passed in Case No. 74/2007 and also Order dated 05.11.2007 of the Ombudsman(CZ) passed in C.R. Case No. OM(CZ)-60 of 2007.

2. The petitioner submitted that it has a large scale industry in industrial estate, Khurda. In the year 2007, dispute arose between the parties as the respondent started raising monthly energy bills based on the readings of the check meter when the main meter was in correct working condition and check meter was recording 1% to 1.4% higher consumption than the main meter. The petitioner paid the bills under protest and requested the respondent to revise the bills as per main meter readings. Since the respondent did not revise the bills as requested, the petitioner approached the GRF-Khurda. The GRF-Khurda disposed off the case on 22.08.2007 upholding the bills raised on check meter readings as genuine. Being aggrieved by the aforesaid order of the GRF-Khurda, the petitioner appealed before the Ombudsman (CZ), Bhubaneswar

and the Ombudsman in its order dated 05.11.2007 disposed of the case with the following directions:

- “(a) *Order dated 22.08.2007 in C.C. Case NO. 31/2007/(KED) of the GRF-Khurda is set aside.*
- (b) *Bills for the period of seven months from November, 2005 to May, 2006 and for further period of four months from March, 2007 to June, 2007 which have been raised based on Check meter readings while the main meter was in working order, shall be revised by the respondents and recast on the basis of consumption recorded in the main meter during those months.*
- (c) *Bills, if prepared during any other period on the basis of check meter reading while the main meter was in working order, shall also be revised by the respondents in the same manner as stated above.*
- (d) *x x x x x x x x x x .*
- (e) *x x x x x x x x x x .*
- (f) *All future bills shall be raised by the respondents on the basis of readings recorded in the main meter while the same is in working order. The main meter must be rectified/replaced expeditiously within reasonable time as and when the same goes out of order. However, billing may be done on the basis of check meter reading only during the period the main meter is out of order.*
- (g) *X x x x x x x x x x .”*

3. Thereafter, the respondent instead of revising the disputed bills on the basis of main meter readings, issued a absurd supplementary bill claiming additional charges of Rs.94,76,628/- for the period from July, 2006 to February, 2007 which was earlier claimed on the basis of main meter reading and already paid by the petitioner. The supplementary bill was raised on the basis of suspicion on pilferage of energy but without initiating proceedings under Section 126 of the Electricity Act, 2003. Subsequently respondent issued a notice on 11.12.2007 demanding payment of the aforesaid amount within fifteen days failing which power supply was to be disconnected. The petitioner had mentioned that the Ombudsman, while setting aside the aforesaid order of the GRF clearly held in Para 3, 4 & 5 of the order that the main meter has been tested frequently by the MRT team. The MRT team every time found the meter in working order and certified it to be correct without indicating out any instance of interference with the meter.
4. Since the respondents did not comply with the order of the Ombudsman and also violated the order by issuing the supplementary bill, the petitioner approached OERC under Section 142 of the Electricity Act, 2003 which was registered as Case No. 74/2007. The Commission in its interim order dated 24.12.2007 in Case No. 74/2007 had stayed the demand-cum-disconnection notice till disposal of the case.

5. In the meantime, the respondent preferred a writ petition (W.P.(C). No. 15866/2007) before the Hon'ble High Court of Orissa challenging the aforesaid order of the Ombudsman and also filed a Misc case No. 9520/2008 for staying the Ombudsman order. The Hon'ble High Court in the interim order dated 07.08.2008 stayed the proceeding of the Case No. 74/2007 at OERC subject to compliance of Ombudsman order by the respondent. Accordingly, the respondent revised the bills which were raised on basis of check meter readings, but did not withdraw the supplementary bill for the period from July, 2006 to February, 2007. However, the Hon'ble High Court disposed of the writ petition by their judgment dated 19.08.2014 confirming the order passed by the Ombudsman. Being aggrieved by the said judgment by the Hon'ble High Court, the respondent approached the Hon'ble Supreme Court in SLP (C) No. 6869/2015, which was dismissed on dated 20.04.2015. As such the order of the Ombudsman has attained its finality.
6. The petitioner has further submitted that on the basis of the aforesaid allegation and demand of Rs.94,76,628/-, the respondent had lodged an FIR in the energy police station against the Managing Director of the petitioner's company as well as against the then Executive Engineer, KED, Khurda. The petitioner faced trial before the court of the Special Judge, Electricity, Bhubaneswar and the Hon'ble Special Court by the judgment dated 20.01.2016 held that the accused persons are found not to be guilty of the offences and are, therefore, acquitted. In addition to that, CESU head office had also initiated a Departmental Proceeding No-16 dated 10.12.2007 against the then Executive Engineer, KED, Khurda. The enquiry officer, after considering the evidences from both the sides concluded that there was no pilferage of energy by the petitioner company and no revenue loss was caused to CESU in this regard.
7. Under the above circumstances the respondent failed in all his efforts to justify the said supplementary bill and filed an application before this Commission for vacation of stay imposed by the Commission vide its interim order dated 24.12.2007 passed in Case No. 74/2007. In its affidavit, the respondent had made a false and misleading statement that they have complied the order dated 24.12.2007 passed by the Ombudsman and has extended relief to the petitioner. Basing on the aforesaid statement of the respondent, the Commission vide its order dated 18.02.2017 disposed of the Case No. 74/2007 observing as given below:-

“6. Heard the parties at length and since the respondent has already implemented the order of the Ombudsman, there is no need to keep the present proceeding u/S. 142 of

the Electricity Act, 2003 pending before the Commission. The Supplementary energy bill shall be based on the findings of the Ombudsman.

xxxx xxxxxx xxxxxx”

8. After receipt of the aforesaid order of the Commission, the petitioner requested the respondent to comply with the direction of the Commission to the effect that “*The Supplementary energy bill shall be based on the findings of the Ombudsman*”. After that the respondent as well as the officials of CESU head office had several round of discussions with the petitioner and the petitioner supplied all the documents/papers as required by the respondent for withdrawal of the supplementary bill, but the respondent has not communicated any final decision in this regard to the petitioner. Since, the Commission has not stipulated any time for compliance of its direction, the respondent is sitting over the matter. In view of the above, the petitioner has prayed the Commission to direct the respondent to withdraw the supplementary bill and impose penalty against the respondent u/S. 142 of the Electricity Act, 2003 for non-compliance of the direction issued by the Commission.
9. The respondent, E.E (Elect.), KED, Khurda, CESU submitted that the petitioner had filed the Case No. 74/2007 before the Commission u/S. 142 of the Electricity Act, 2003 against the respondent for non-compliance of the order dated 05.11.2007 passed by the Ombudsman. When the matter was pending before this Commission, the respondent challenged the aforesaid order of the Ombudsman before the Hon’ble High Court of Orissa in W.P.(C) No. 15866/2007 and the Hon’ble Court vide the order dated 07.08.2008 in Misc. Case No. 9520 of 2008 (arising out of W.P.(C) No. 15866/2007) had directed the respondent to comply the order passed by the Ombudsman pending final judgment of the writ petition. Accordingly, the energy bills of the petitioner for the period from November, 2005 to May, 2006, March, 2007 to June, 2007 and November, 2007 to June, 2008 have been revised based on the readings of the main meter which were earlier raised basing on the check meter readings and an amount of Rs.11,01,953/- has been credited to the petitioner in the month of September, 2008. No bill has been raised on the basis of check meter reading when the main meter is in “ok” condition. Hence, the order dated 05.11.2007 passed by the Ombudsman has been complied fully.
10. The respondent further submitted that While the matter was pending before the Hon’ble High Court as well as the Commission, a supplementary bill to the tune of Rs.94,76,628/- was raised for the period from July, 2006 to February, 2007 taking into account the loss caused by the consumer due to theft of power by manipulating the

energy consumption recorded in the main meter when the check meter was not in working order. The respondent submitted that average monthly energy consumption of the petitioner preceding to the disputed period (i.e. from 7/2006 to 2/2007) was 1.86174 MU whereas the average monthly energy consumption succeeding to the disputed period was 1.649644 MU and the average monthly energy consumption during the disputed period is 1.302875 MU based on the main meter reading when the check meter was out of order. Further from the water flow meter the respondent analysed that there was no fall in water consumption during the disputed period. From the above analysis the respondent reached the conclusion that the petitioner has managed to manipulate the energy consumption in the main meter during the disputed period when the check meter was in defective condition. Hence, the respondent served the supplementary bill to the petitioner based on the monthly average energy consumption as per the main meter readings for the period from 03/2007 to 07/2007 i.e. average of five month consumption succeeding to the disputed period. In addition to the above, there was a loss of revenue towards demand charges during April, 2006 to May, 2007 for not taking the meter reading before the reset of the MD i.e. on the last day of the month. After ascertaining the MD for the above period from the meter dump data, additional demand charges have been claimed in the supplementary bill. Accordingly, the total bill amounting to Rs.94,76,628/- was served to the petitioner.

11. The supplementary bill in question was not the subject matter before the Ombudsman. The Commission disposed of the proceeding u/S. 142 of the Electricity Act, 2003 in Case No. 74/2007 observing that the order passed by the Ombudsman has been complied with. The present application filed by the petitioner is only for waiving the supplementary bill which was raised on different grounds and not covered under the award passed by the Ombudsman in its order dated 05.11.2007. Hence, the present application initiated u/S. 142 of the Electricity Act is not maintainable and hence liable to be dismissed. If the petitioner is aggrieved with the supplementary bill he may approach the forum available for consideration.
12. Heard the parties at length and the written submission of the parties are taken into the records. The Commission observed that the Ombudsman (CZ) vide its order dated 05.11.2007 passed in Case No. Om (CZ)-60/2007 has awarded as given below:-

“(a) Order dated 22.08.2007 in C.C. Case NO. 31/2007/(KED) of the GRF-Khurda is set aside.

- (b) *Bills for the period of seven months from November, 2005 to May, 2006 and for further period of four months from March, 2007 to June, 2007 which have been raised based on Check meter readings while the main meter was in working order, shall be revised by the respondents and recast on the basis of consumption recorded in the main meter during those months.*
- (c) *Bills, if prepared during any other period on the basis of check meter reading while the main meter was in working order, shall also be revised by the respondents in the same manner as stated above.*
- (d) *x x x x x x x x x x .*
- (e) *x x x x x x x x x x .*
- (f) *All future bills shall be raised by the respondents on the basis of readings recorded in the main meter while the same is in working order. The main meter must be rectified/replaced expeditiously within reasonable time as and when the same goes out of order. However, billing may be done on the basis of check meter reading only during the period the main meter is out of order.*
- (g) *X x x x x x x x x x .”*

13. The respondent challenged the above order of the Ombudsman before the Hon’ble High Court of Orissa in W.P.(C) No. 15866/2007 and the Hon’ble Court vide the order dated 07.08.2008 in Misc. Case No. 9520 of 2008 (arising out of W.P.(C) No. 15866/2007) directed the respondent to comply with the order passed by the Ombudsman pending final judgment of the writ petition. Accordingly, the respondent revised the energy bills for the period from 11/2005 to 05/2006, 03/2007 to 06/2007 and from 11/2007 to 06/2008 taking the consumption recorded in the main meter in the month of September, 2008. The supplementary bill in question was raised by the respondent on 11.12.2007 i.e. about one month after issuance of the order by the Ombudsman. Therefore, it was not the subject matter before the Ombudsman. However, it was raised before this Commission while adjudicating the Case No. 74/2007 and the Commission while disposing of the said case vide its order dated 18.02.2017, have observed that:

“6. Heard the parties at length and since the respondent has already implemented the order of the Ombudsman, there is no need to keep the present proceeding u/S. 142 of the Electricity Act, 2003 pending before the Commission. The Supplementary energy bill shall be based on the findings of the Ombudsman.”

- 14. We find that supplementary energy bill for the period July, 2006 to February, 2007 has been raised by the Respondent due to suspicion on pilferage of energy by the Petitioner. This bill is in addition to the original bill which was based on working main meter reading.
- 15. It is submitted before us by the respondent, that the supplemental bill consists of the amount arising out of alleged theft of energy along with default demand charges. It was

submitted that the demand charges from April, 2006 to May, 2007 were not raised by the respondent in absence of recorded monthly demand (which requires resetting of MD each month). The same has been added to the supplementary bill on the basis of dump report taken later and is not a part of Ombudsman's order. We are not inclined to form an opinion on this in the supplementary bill at this stage as it is neither verified nor within our scope.

16. We are of the view that since the matter has already been deliberated before Hon'ble High Court & Hon'ble Supreme Court, the issues are to be settled in line with order of Ombudsman. Therefore, the Commission directs the respondent to comply with the decisions of Ombudsman in line with direction of Hon'ble Apex Court, Hon'ble High Court of Orissa and this Commission under direct supervision of Chief General Manager (Commerce), CESU within (fifteen) 15 days of this order. Affidavit regarding compliance shall be signed jointly by the complying officer and CGM (Commerce), CESU and should be submitted to the Commission within three weeks of this order. Further, the Commission also directs the petitioner to pay the amount towards additional demand charges for the period from April, 2006 to May, 2007 within fifteen days from the issue of the revised bill by the respondent. In case the petitioner is not satisfied with the computation of the additional demand charges claimed by the respondent, they may approach the appropriate forum for redressal of grievances within one month.

17. Accordingly, the case is disposed of.

Sd/-
(S.K.Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson

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

**Present: Shri U. N. Behera, Chairperson
 Shri S. K. Parhi, Member**

Case No. 71/2017

M/s. Prinik Steels Pvt. Ltd.	Petitioner
Vrs.		
E.E (Elect.), KED, Khurda, CESU	Respondent

In the matter of: An application under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 18.02.2017 of the Commission passed in Case No. 74/2007 and also Order dated 05.11.2007 of the Ombudsman(CZ) passed in C.R. Case No. OM (CZ)-60 of 2007.

ORDER

Date of hearing: 28.05.2019

Date of order: 06.06.2019

The petitioner M/s. Prinik Steels Ltd. had filed this petition against E.E (Elect.), KED, Khurda under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 18.02.2017 of the Commission passed in Case No. 74/2007 and also Order dated 05.11.2007 of the Ombudsman(CZ) passed in C.R. Case No. OM(CZ)-60 of 2007.

2. After hearing the parties and perusal of the case records, the Commission disposed of the case vide their final order dated 09.04.2019 by directing the respondents to comply with the decisions of Ombudsman in line with direction of Hon'ble Apex Court, Hon'ble High Court of Orissa and this Commission under direct supervision of Chief General Manager (Commerce), CESU within (fifteen) 15 days of that order. The Commission has also directed that affidavit regarding compliance shall be signed jointly by the complying officer and CGM (Commerce), CESU and should be submitted to the Commission within three weeks of that order. Further, the Commission has also directed the petitioner to pay the amount towards additional demand charges for the period from April, 2006 to May, 2007 within fifteen days from the issue of the revised bill by the respondent. It was also directed by the Commission that in case the petitioner is not satisfied with the computation of the additional demand charges claimed by the respondent, they may approach the appropriate forum for redressal of grievances within one month.

3. During hearing on 28.05.2019 Shri Tapan Kumar Mohanty, Sr. GM (Comm.) and Shri Manoj Kumar Das, AGM (Elect.), KED, Khurda both appeared before the Commission and prayed for one month more time for implementation of the above direction of the Commission as at present there is no CGM (Comm.), CESU after the retirement of the then CGM (Comm.). The Sr. GM (Comm.) is looking after the day-to-day function of the Commerce Branch of CESU. Due to devastation of the electrical network caused by the recent cyclone “FANI” all the officers of CESU including themselves are engaged in the process of restoration work of the electrical pole and line under the Khurda Electrical Division and the said restoration work may take another six weeks for completion. Therefore, one month time may be allowed to the respondents to implement the order dated 09.04.2019 of the Commission passed in Case No. 71/2017.
4. The Commission considering the above difficulties as submitted by the respondents allows twenty days more time to implement the order dated 09.04.2019 passed in Case No. 71/2017. Further, as the position of CGM (Comm.) is lying vacant, the Sr. GM (Comm.) look after the function of the Commerce Branch shall ensure compliance of the order in place of CGM (Comm.).
5. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson