ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021
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Present: Shri U. N. Behera, Chairperson
Shri A. K. Das, Member
Shri S. K. Parhi, Member

Case No. 16/2018

M/s. Mahavir Ferro Alloys Pvt. Ltd. …… Petitioner
Vrs.
GRIDCO Ltd. …..... Respondent

In the matter of: **An application u/S. 86 (1) (f) of the Electricity Act, 2003 for adjudication of dispute for non-payment of dues relating to supply of power from its 12 MW CGP at Kalunga Industrial Estate, Kalunga to GRIDCO Ltd.**

For Petitioner: Shri R. P. Mohapatra, the authorized representative on behalf of M/s. Mahavir Ferro Alloys Pvt. Ltd.,

For Respondent: Shri Tapas Pattnaik, DGM, GRIDCO Ltd.

ORDER

Date of hearing: 11.09.2018 **Date of order:09.04.2019**

The Petitioner M/s. Mahavir Ferro Alloys Pvt. Ltd., Kalunga, Sundargarh is operating a Ferro Alloys Industry along with a Captive Generating Plant (Co-generation Plant using waste heat) of capacity 12 MW, which was synchronized with the GRID on 18.03.2009. The petitioner was supplying surplus power of his CGP to GRIDCO w.e.f. March, 2009 as per GRIDCO's requirement. The present petition has been filed by the petitioner u/S. 86 (1) (f) of Electricity Act, 2003 for adjudication of dispute for non-payment of dues relating to supply of power.

2. The Petitioner submitted that the Commission in its Order dated 14.03.2008 had determined the Policy for pricing of the surplus power from CGPs, wherein the surplus power injected by the CGPs has been classified as (a) Firm Power (b) Non-firm Power and (c) Inadvertent Power. Subsequently the Commission in its various Orders has determined the price for supply of surplus power to the Respondent from the CGPs and Co-generation plants.

3. The Commission in its order dated 23.11.2010 in Case No. 117 & 118 of 2010 had determined the price for supply of Firm power by Captive/Co-generation Plants for monthly supply in three slabs i.e. up to 7.3 MU, up to 36 MU and beyond 36 MU. For supplying 100% firm power the price fixed was Rs.2.75/KWh, Rs.3.10/KWh and Rs.3.25/KWh for the three slabs. The corresponding price for supplying 60% and above firm power was Rs.2.75/KWh, Rs.3.00/KWh and Rs.3.20/KWh. Further, any injection at a frequency of 50.20 Hz and above shall be treated as Free Power to the State Grid and injection of inadvertent/in-firm power within the operating frequency band of 49.50 to 50.18 Hz will be paid at the pooled cost of State Hydro power. This pricing of surplus power from the CGP/Co-gen Plants are continuing till date.

4. The Petitioner has further submitted that they have served the bills to the Respondent based on the tariff determined by the Commission from time to time for supply of power from its CGP/ Co-gen Plant to the Respondent, based on the monthly energy consumption data of the Energy Billing Centre of the Respondent. The Respondent was not making full payment of the billed amount and even the part payment was not being made by the respondent within the stipulated time period. Consequently, the arrear amount payable by the Respondent against availing of power from the CGP of the Petitioner, for the period from March, 2009 to January, 2016 has reached Rs.4,19,19,535/ (Rupees Four crores Nineteen lakhs Nineteen thousand and Five hundred and thirty five).

5. The Petitioner further submitted that for the period from February, 2016 onwards, there was supply of power to the Respondent without any day-ahead schedule, which is to be treated as injection of inadvertent power based on the "Policy for pricing of surplus power" notified by the Commission on 14.03.2008. In the letter dated 19.12.2017 the Petitioner has submitted the Energy bills to the Respondent for the period from February, 2016 to November, 2017 amounting to Rs.16,46,839/- (Rupees Sixteen lakhs Forty six thousand eight hundred thirty nine), based on the pooled cost of hydro power of the State. In view of the huge outstanding arrears, the Petitioner in letter dated 12.03.2018 requested GRIDCO authority to make payment of the dues within 10 days. But no payment was made by the respondent. Therefore, the Petitioner prays the Commission to direct the Respondent to make payment of the due amount including the rebate already deducted from the part paid bills along with delayed payment surcharge @1.25% per month on the outstanding dues.

6. The petitioner in its rejoinder has submitted that GRIDCO in its letter dated 22.09.2018 has returned the energy bill of the Petitioner for the month of June, 2018 on the ground that GRIDCO has neither asked the petitioner to supply power to it nor there is any subsisting commercial arrangements between GRIDCO and petitioner for such transaction. The petitioner further submitted that the billing of power injected into the GRID was made based on the data of energy billing centre of GRIDCO and was therefore fully within the knowledge of GRIDCO and at no stage communication was received from GRIDCO to stop injection of power, which in any case cannot be stopped due to the must run status of the CGPs. The energy bills for supply of inadvertent power starting from February, 2016 were submitted on 19.12.2017 which was not objected by GRIDCO at that time.

7. The respondent, GRIDCO submitted that they have made the reconciliation of bills of all similarly placed CGPs as per the orders dated 29.12.2015 and 19.07.2016 of the OERC in Case Nos. 26/2015 & 8/2016 respectively. Accordingly, the Reconciliation statement of bills of the Petitioner was prepared and the Petitioner was requested to come to the office of the CGM (PP), GRIDCO for finalizing the Reconciliation. The petitioner neither turned up for any discussion on finalisation of the reconciliation Statement nor brought to the notice of GRIDCO any anomaly in the Reconciliation statement. Without consulting/ discussing /communicating anything to GRIDCO, the Petitioner preferred to file the present petition before the Commission claiming huge amount which is arbitrary in nature. The Petition filed by the Petitioner is devoid of any merit and is liable for outright rejection and the Commission may direct the petitioner to first finalise the reconciliation with GRlDCO. In addition to that the petitioner has categorically refused to inject the power to GRID as per day ahead schedule.

8. The Respondent further submitted that nowhere in the referred orders of the Commission; it has been mentioned to pay the CGPs with hydro-pool cost without any Contract with GRIDCO. Rather in the order dated 28.10.2009 at Para 19 (vi) the OERC has directed the prospective CGP power sellers to sign Agreement for supply of Power to GRIDCO. Thus the claim of the petitioner for payment at hydro-pool cost, for the injection of such unsolicited/un-contracted/unscheduled power to the Grid, without any subsisting contract, for indefinite period is not sustainable. It is worth mentioning here that the Commission in its ARR approval for GRIDCO for

FY-2014-15, FY-2015-16, 2016-17, 2017-18 & FY-2018-19 had not approved any purchase of power by GRIDCO from CGPs.

9. Further, the respondent has submitted that, as mandated in the Electricity Act 2003 at Section 2 (70), "supply", in relation to electricity, means the sale of electricity to a licensee or consumer. 'Thus, sale cannot be effected without contract between the two parties. In this connection, the order dated 08.05.2017 of Hon'ble APTEL against Appeal No. 120 of 2016 & IA No. 272 of 2016 in the matter of M/s Kamachi Sponge & Power Corporation Ltd., Chennai and Tamil Nadu Generation & Distribution Corporation Ltd. reveals as follows:-

"Para-9(g)- " XXXXXXXXXXXXxxx .... This Tribunal in the judgments in .Appeal Nos. 267 of 2014 and 68 of 2014 also held that energy pumped into the grid without consent/agreement and schedule, need not be compensated."

Para-l0 (b) (iii) "xxxxxxxxxxxxxx .... From the combined reading of all the above provisions and the communications exchanged between the Appellant and the Respondent No.1, it is clearly established that the Appellant has pumped the energy on its own without entering into any contract with Respondent No. 1 and without the knowledge/ schedule from SLDC. The energy pumped into the grid during the period under dispute by the Appellant is unauthorized and does not call for any payment by the Respondent No. 1.

Para-l0(c) i "xxxxxxxxxx .... Here we would like to mention that each entity created under the Electricity Act, 2003 has a clear defined role. In this case, the responsibility of regulation of power inflow into the grid from all suppliers lies with SLDC in accordance with Section 32 of the Electricity Act, 2003, based on the contractual agreements entered by the distribution licensee with power generators suppliers through a well-established system of scheduling. It is the duty of everyone connected with the operation of the power system to comply with the directions of the SLDC in its control area. In the instant case, the Appellant has not sought any approval/ schedule from SLDC before synchronization for pumping any power into the grid. Even the SLDC was not aware of the power pumped during this period by the Appellant into the grid. Hence, the onus of the wrong doing by the Appellant cannot be shifted to the Respondent No.1."

Para-(10) (g)(i)"The safe and economic operation of the grid is of utmost importance. In this regard, many regulations, rules and procedures have been made by the Central/State Regulator(s). Maintenance of the grid discipline is the responsibility of all the stakeholders. The Appellant has pumped power into the grid without knowledge obtaining prior approval of the SLDC and without any valid agreement contract with the Respondent No.1. t If every generator starts injecting power into the grid without prior approval of the grid operators/LDCs and without valid contractual agreements this may jeopardise secure grid operations and may lead to catastrophe. The action of the Appellant is not justified and moreover pleading that there was no such impact in the instant case is misplaced."

Para-10(I) iv "XXXXXXXXXXXXXX .... The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/contractual

agreement with the distribution licensee and without the approval/ scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments."

10. The respondent stated that from the above orders of the Hon'ble APTEL it is inferred that the CGPs should not be allowed to inject power to the gird indiscriminately without contract and without scheduling. The injection of power by the petitioner without contract and without schedule is unauthorised and not entitled for any payment. Entertaining such power as supply and payment to/by GRIDCO amounts to violation of Section 32(2) (a) of Electricity Act 2003. Further the Petitioner in reply to the LoI issued on 21.04.2014 mentioned that, they cannot inject power as per day ahead schedule and will inject power and draw power as and when required. The reconciliation statement was prepared upto 28.06.2013 i.e upto the period during which the petitioner was submitting the day ahead schedule for supplying surplus power to GRIDCO. In the above premises, the petition filed by the Petitioner is devoid of any merit and is liable to be rejected.

11. Heard the parties at length. Their written submissions, arguments put forth during the hearings were considered. The Commission observed that mere connectivity to the transmission system does not give a right to any generator to inject power at their own convenience and consequently claim compensation. Any supply from an independent generator or a CGP can only be effected through a contract. That means the buyer and the seller both have to agree for purchase and sale of power. For this we are reiterating our own order in this regard. In para 6 of the order dated 30.06.2009 in Case No. 6-20/2009 on the pricing of surplus CGP power to be procured by GRIDCO we had stated as follows:

"6.

(i) XXXXXXXXXXXXX

(ii) The individual Captive Generating Plants (CGPs) may sign an Agreement with GRIDCO or the DISCOMs, covering the volume and duration of supply of firm power as may be mutually agreed upon. In the event of the Commission specifying the volume and duration of supply, then such specification shall prevail. The terms and conditions for supply of such power will include all such conditions as specified by the Commission and such other terms as may be mutually agreed upon.

(iii) The price at which the surplus power of CGPs would be supplied to GRIDCO or the DISCOMs, as per these agreements, shall be at a rate as has been decided by the Commission or as may be determined by the Commission from

time to time and till such time, as is required or necessary in the eyes of the Commission.

(iv) Signing of a fresh agreement is also applicable to IMFA/NALCO and such other CGPs having subsisting agreement/MOU in accordance with the principles as indicated in (ii) above. In other words, these CGPs may also sign fresh agreement with GRIDCO as has been clarified vide para 8(i) of the order dated 27.6.2009 of the Commission in Case No.59/2009.

(v) XXXXXXXX

In Para 18 and 27 (iv) of our order in Case No. 48 & 49/2010 dated 31.05.2010 on the same issue we have stated as follows:

"18. Basically the rate fixed for procurement of power for GRIDCO from CGPs is the indicative price of the upper limit and accordingly GRIDCO and CGPs were to sign agreement which among other things was to cover the volume and time of supply. Like any other sources of supply of power, supply from the CGPs was one of the sources and the upper limit of the rate was fixed by the Commission for facilitating commercial arrangement between the CGP and GRIDCO. xxxxxxxxxxxx"

27. (iv) xxxxxxxxx If the State Govt. or GRIDCO insist upon the owner of CGP to supply more electricity to the State Grid for public interest, and thereby CGP's total sale (including sale under Open Access) increases more than 49% of its total generation, then the issue to be addressed with mutual satisfaction in the PPA, or special agreement before such supply is effected. The existing PPA is to be suitably amended."

Finally in our interim order out of these types of dispute in Case Nos. 49, 50, 52 & 54/2011 in Para 8 we have mentioned as follows:

"8. Further, GRIDCO is advised to execute short-term PPAs with the CGPs before purchasing their surplus power and incorporate all such issues in the PPAs so as to minimize disputes. The existing PPAs between GRIDCO and some CGPs may also be amended accordingly.

12. From the conjoint readings of all the above orders of the Commission on purchase of CGP power by GRIDCO it is clear that there must be an agreement to effectuate the sale of power. In this context, the observations of Hon'ble APTEL in their order dated 08.05.2017 passed in Appeal No. 120 of 2016 as quoted by GRIDCO above strengthens view of the Commission.

13. We are aware that the power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation/contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and a valid schedule so that safety of the grid at no situation is affected. Power system cannot be a dumping ground for unwarranted power. Injecting erratically and claiming compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of

power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the grid.

14. In view of the above, we observe that two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline. GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract. From the submission of GRIDCO it is observed that the petitioner has given schedule upto 28.06.2013 beyond which they have refused to do so. Accordingly, GRIDCO has prepared reconciliation statement upto that date. Therefore, the Commission directs GRIDCO to prepare the reconciliation statement based on the above observations of the Commission within one month and the petitioner should re-check the same and bring out anomaly, if any, in it. Once the reconciliation statement is finalized by both the parties, GRIDCO must pay the amount concluded in that statement to the petitioner within one month thereafter.

15. With these observations the case is disposed of.

Sd/-	Sd/-	Sd/-
(S. K. Parhi)	**(A. K. Das)**	**(U. N. Behera)**
Member	**Member**	**Chairperson**