

**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. 24/2019**

M/s. Raja-1 Flyash Bricks	.....	Petitioner
Vrs.		
The E.E (Elect.), CED, Balasore	.....	Respondent

**In the matter of:**      **Application under Section 142 of the Electricity Act, 2003 for contravention of the provisions of Regulation 64 of the OERC Distribution (Conditions of Supply) Code, 2004.**

**For Petitioner:**      Shri Falguni Rajguru Mohapatra, Authorized representative.

**For Respondent:**      Shri Suresh Chandra Dash, Advocate.

**ORDER**

**Date of hearing: 06.08.2019**

**Date of order: 14.08.2019**

The petitioner M/s. Raja-1 Flyash Bricks has filed this petition under Section 142 of the Electricity Act, 2003 for contravention of the provisions of Regulation 64 of the OERC Distribution (Conditions of Supply) Code, 2004.

2. The representative of the petitioner stated that it is a consumer under the respondent having contract demand of 50 KW (below 110 KVA) at HT. The Commission vide its RST Order for the FY 2017-18 at Para 401 has clarified as given below:

*“Some consumers with connected load of less than 110 KVA might have been provided with simple energy meters which record energy consumption and not the maximum demand. But the OERC Distribution (Conditions of Supply) Code, 2004, Regulation 64 provides that “contract demand for load of 110 KVA and above shall be as stipulated in the agreement and may be different from the connected load. Contract Demand for a connected load below 110 KVA shall be the same as connected load. However, in case of installation with static meter/meter with provision of recording demand, the recorded demand rounded to nearest 0.5 KW shall be considered as the contract demand requiring no verification irrespective of the agreement. Therefore, for the purpose of calculation of Monthly Minimum Fixed Charge (MMFC) for the connected load below 110 KVA, the above shall form the basis. The licensees are directed to follow the above provision of Regulation strictly.”*

3. He further submitted that from March, 2016 till date, the respondent has been charging overdrawal penalty on the petitioner although it is not applicable for the consumers having CD below 110 KVA. This act of the respondent is violative of the directions of the Commission as well as Regulation 64 of OERC supply Code, 2004. Therefore, he prayed the Commission to direct the respondent to issue revised bills by withdrawing penalty imposed in the bills of the petitioner and not to charge overdrawal penalty further and also to penalise the respondent under Section 142 of the Electricity Act, 2003 for contravention of Regulation 64 of OERC Supply Code, 2004 and directions of the Commission.
4. The respondent has submitted that the present petition is not maintainable as the petitioner, on an in earlier occasion had approached this Commission under the aforesaid provision of law vide Case No. 21/2018 making/raising self same allegations against the respondent seeking implementation of order dated 19.02.2018 passed in C.R. Case No. 44/2017 of the Ombudsman-II arising out of order dated 12.06.2017 passed in Case No. 98/2017 of the GRF, Balasore. But the said OERC Case No. 21/2018 has been disposed by the Commission vide their order dated 23.10.2018 with observations and directions which have not been followed and have been contravened by the petitioner. Hence, the present proceeding on self same issue not being maintainable before this Commission is liable to be rejected. The Commission in Case No. 21/2018 dated 23.10.2018 had observed that the outcome of writ petitions i.e. W.P.(C) No. 29408/2011, W.P.(C) No. 2154/2014 and W.P.(C) No. 10153/2014 before the Hon'ble High Court will be applicable to both the parties herein. Therefore, nothing is required to be dealt with or adjudicated by this Commission in terms of the prayers as made in the present case.
5. The respondent further submitted that the present proceeding is also not maintainable being hit under Section 10 & 11 Civil Procedure Code, 1908 and barred by the principle of '*Res Judicata*' and as such liable to be dismissed. Further, in cases of consumption in excess of the contracted load *inter-alia* would fall under Explanation (b) (iv) to Section 126 of the Act, 2003, besides being in violation of Regulations 82 and 106 of OERC (Conditions of Supply) Code, 2004 and terms of the agreement. The above rulings are the laws laid down by the Hon'ble Apex Court in Civil Appeal No. 8859/2011 (Executive Engineer and another Vrs. M/s. Seetaram Rice Mill) decided on 20.10.2011 reported in (2012)2 SCC.108.

6. The respondent further submitted that the above case is not maintainable as per law and hence instead of offering any reply on the merit of the case he submits that wherever a consumer of electricity commits the breach of the terms of the agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned connected load, such consumer would be liable within the ambit and scope of Section 126 of the Electricity Act, 2003.
7. Heard the parties and perused their written notes of submissions which are taken into record. The Commission observed that the order dated 23.10.2018 passed in Case No. 21/2018, as referred by the respondent at para 4 above, is different from the instant case, as in the earlier case penalty was imposed under Section 126 of the Electricity Act, 2003. But in the present case overdrawal penalty has been imposed by the respondent without penalty under Section 126 of the Electricity Act, 2003 and there are clear provisions in the Retail Tariff Order of the Commission on this matter. Hence, it is a case of billing dispute between the petitioner and the respondent herein. Therefore, the petitioner should approach the proper forum of law for resolution of billing dispute.
8. With the above observation, the case is disposed of.

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

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