

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

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

**Case No. 43/2019**

<b>M/s. Protection Manufacturers Pvt. Ltd.</b>	.....	<b>Petitioner</b>
<b>Vrs.</b>		
<b>E.E (Elect.), KED, Khurda</b>	.....	<b>Respondent</b>

**In the matter of:**     **Application under Section 142 of the Electricity Act, 2003 for non-implementation of order dated 21.07.2015 of OERC passed in Case Nos. 29 of 2014 and order dated 20.09.2007 of the Ombudsman-I passed in Case No. 45 of 2017.**

**For Petitioner:**       Shri Piyush Gupta

**For Respondent:**     Shri B. K. Nayak, Advocate

**ORDER**

**Date of hearing: 29.10.2019**

**Date of order: 04.11.2019**

The present case has been filed by M/s. Protection Manufactures Pvt. Ltd. under Section 142 of the Electricity Act, 2003 for non-implementation of order dated 21.07.2015 of the Commission passed in Case No. 29 of 2014 and order dated 20.9.2007 of the Ombudsman (CZ) passed in C.R. Case No. 45 of 2007. The Commission while disposing of Case No. 29 of 2014 has directed as follows:-

*When above order of GRF, Khurda passed in C.C. Case No. 346/2013 was not implemented by the respondent herein, the petitioner filed Case No. 29 of 2014 u/S. 142 of the Electricity Act, 2003. The said case was taken up for hearing on question of admission as well as on merit and the Commission in their interim order dated 20.12.2014 directed both the parties to sit together for amicable settlement of their issues raised in the above case within two weeks of receipt of that order. The Respondent was further directed to file reconciliation report within three weeks of the order.*

*Since, the Commission did not receive any compliance report from the respondent CESU a reminder asking for status report was issued on 16.06.2015 by the Commission. On receipt of the Commission's Letter a meeting was held between representative of the Petitioner and officials of CESU on 03.07.2015 in the office of the GRF, Khurda in the presence of President Shri S K Sahu and Member Shri G.B. Patra. Now, the Executive Engineer KED, Khurda has filed the status of implementation of the order dated 20.12.2014 passed by the Commission.*

*From the perusal of the status report and conciliation report between parties we find that all the issues have been mutually settled except the issue of delayed payment surcharge from*

*01.06.2002 to 01.09.2006 which will be recalculated and adjusted in the monthly bill of July, 2015. The Petitioner has also agreed to the settlement as observed from the said report. In view of above conciliation report we find no reason to proceed in this case and the same is thus dropped.*

2. The Petitioner has stated that Respondent did not take any action to recalculate and adjust the DPS in the monthly bill of July, 2015 despite repeated reminders given by the Petitioner for a long time. However, the Respondent vide their letter dated 21.01.2019 intimated the Petitioner that their office has recalculated the DPS from June, 2002 to October, 2006 which came to Rs.1,35,494/- instead of Rs.75,617/- and requested the Petitioner to deposit the differential amount of Rs.59,877/- towards revision of DPS from June, 2002 to October, 2006. The Petitioner stated that the DPS calculation made by the Respondent was totally incorrect and not acceptable to the Petitioner as it did not take into account reduction of load from 389 KVA to 302 KVA as per the order of the Ombudsman (CZ) passed in C.R. Case No. 45 of 2007. The Petitioner submitted that earlier on a separate petition filed by the Petitioner, Ombudsman (Central Zone) vide order dated 20.09.2007 in C.R. Case No. 45 of 2007 had directed the Respondent to reduce the contract demand of the Petitioner's unit from 389 KVA to 302 KVA w.e.f. 01.06.2002. The Ombudsman had also directed that the energy bills should be revised by the Respondent by taking into account reduced contract demand of 302 KVA. As per the said order of the Ombudsman an amount of Rs.8,08,720/- towards differential demand charges was refunded by the respondent. Therefore, revised DPS should be calculated for the above stated period i.e. 01.06.2002 to 01.09.2006 as per the said order of the Ombudsman. Without implementing the order of the Ombudsman (CZ) the respondent issued disconnection notice dated 6.03.2019 and the Petitioner finding no other way challenged the same before the Hon'ble High Court in W.P.(C) No.7274 of 2019. The Hon'ble Court vide their order dated 4.4.2019 had disposed of the writ petition without expressing any opinion on merits of the case and granted liberty to the petitioner to move this Commission within a week. Thereafter, the petitioner has filed the above case under S.142 of the EA, 2003 for non-compliance of the order of the Ombudsman and also order of the Commission passed in Case No. 29 of 2014.
3. In its reply the Respondent has stated that the Petitioner is a LI consumer and had taken power supply initially for a CD of 389 KVA in the year 2001. Subsequently, that CD was reduced to 302 KVA w.e.f. 01.06.2002 and that was also further reduced to 220 KVA w.e.f. 01.12.2007. During an inspection by MRT team of the premises of the industry it was detected that the industry had enhanced its CD to 265 KVA unauthorisedly. Accordingly, the Petitioner was directed to pay additional security of Rs.6,67,473/- and make fresh

agreement. Though the consumer deposited the additional security deposit on 16.12.2013 if did not execute fresh agreement.

4. The Respondent further submitted that the Petitioner filed a complaint before GRF in C.C. No. 346/2013 wherein he challenged the collection of Rs.2,04,197/- towards arrear energy charge and Rs.6,67,473/- towards security deposit. In its order dated 31.01.2014 GRF directed the Respondent to review the period of security deposit and make payment of the interest on the same and also to review the quantum of additional security deposit basing on Regulation 20 of the Supply Code. GRF further directed to cross check the adjustment of all the payments by the petitioner including DPS after such compliance. As per the order of GRF all the claims of the Petitioner were settled and he was intimated on 21.03.2014 to make payment of Rs.14,45,306/- towards arrear energy charges.
5. Being aggrieved by this settlement the Petitioner approached OERC in Case No. 29/2014 for non-compliance of the order of GRF dated 31.01.2014 passed in C.C. No. 346/2013. OERC in their interim order dated 20.12.2014 observed that the dispute between the parties needs to be resolved by sitting together in accordance with the direction of GRF and as per OERC Regulation 2004 and directed both the parties to sit together in the office of GRF to reconcile the disputed claims.
6. The Respondent further submitted that as per the order of OERC the conciliation meeting was held on 03.07.2015 in presence of President, GRF, Member, GRF, Manager (Electrical) and two representatives of the Petitioner. It was resolved in the said meeting that DPS raised for period of load reduction from 01.06.2002 to 01.09.2006 would be recalculated and adjusted in the monthly bill of July, 2015 and both the parties agreed to the same. All the parties signed the reconciliation report. Due to non-availability of old ledgers of the above mentioned period the consumer was intimated to submit the energy bills of that period. The consumer submitted the energy bills which were received by the Respondents on 29.10.2018. That as per the conciliation meeting recalculation of DPS from June, 2002 to October, 2006 was made and it was found that the consumer was liable to pay the differential amount of Rs.59,877/- towards revision of DPS from June, 2002 to October, 2006. A copy of the calculation of DPS was communicated to the Petitioner on 21.01.2019. Therefore, the order of the Commission dated 21.07.2015 has been fully complied.
7. Regarding implementation of order of Ombudsman in C.R. Case No. 45/2007 dated 20.09.2007 the Respondent submitted that as per the said award the contract demand was reduced from 389 KVA to 302 KVA from 01.06.2002 and the energy bill and security deposit was accordingly revised taking into consideration the reduced contract demand. By

the letter dated 13.02.2008 the decision was communicated to the Petitioner along with the revised statement. As per the revised statement the consumer was entitled to refund of Rs.4,28,138.60/-. The said amount was also adjusted in the next energy bill.

8. The Respondent stated that regarding revision of energy bill from June, 2002 till April, 2019, the Petitioner is a regular defaulter in payment of energy charges and is not making full payment of the bill. Due to partial payment the arrear is accumulating. The energy bill of March, 2019 including arrear and revised differential DPS comes to Rs.16,54,780/-. To avoid disconnection the Petitioner had submitted three numbers of cheques for Rs.12,58,266/- which were dishonoured by the bank. Though the Petitioner is availing power supply continuously electricity dues have not been paid for the months of March, 2019 to June, 2019. The arrear by the end of June, 2019 has reached a staggering level of Rs.25,45,770/-.
9. In its rejoinder the Petitioner has stated that the statement of revision of DPS by CESU has never been communicated to them. The averment of CESU that it was communicated on 21.01.2019 is not correct. As per the conciliation proceeding before the GRF, Khordha on 03.07.2015 it was decided that such DPS should be revised and adjusted in the monthly bill of July, 2015 but with clear violation of such proceeding the bill was revised wrongly and in a hurriedly manner on 21.01.2019. Such statement is not clearly understood and within four days time it cannot be evaluated properly. From the review of revision statement of DPS it is seen that DPS previously was raised for Rs.75,617/- for the period 06/2002 to 10/2006. But in the revision statement it is Rs.1,35,494/-. It is not understood when energy bill is reduced due to reduction of CD how DPS has increased. The detailed revision statement has not been given to the Petitioner.
10. Heard the parties at length. The case arises out of limited remand of Hon'ble High Court in WP(C) No. 7274/2019. The issue before us is the non-implementation of our order dated 21.07.2015 in Case No. 29/2014. In that order the Commission had noted that all the issues had been mutually settled except the issue of delayed payment surcharge from 01.06.2002 to 01.09.2006 which would be recalculated and adjusted in the monthly bill of July, 2015. Though the disputing parties agreed in the conciliation meeting dated 03.07.2015 before GRF that they would settle it among themselves this has not been materialized. The parties are in disagreement with each other on the methodology of calculation of DPS for that period. The issue has already taken the colour of bill dispute which the GRF had not resolved in the conciliation meeting on 03.07.2015 with a belief that this would be resolved between parties amicably.

11. Therefore, the matter is again referred back to GRF, Khordha under whose supervision the conciliation meeting had taken place. The GRF, Khordha shall resolve only the unresolved issues of recalculation of DPS from 01.06.2002 to 01.09.2006 within one month from the date the issue is again raised before them. The Petitioner is directed to file a petition elaborating its stand regarding the methodology of determination of DPS from 01.06.2002 to 01.09.2006 within 15 days from the issue of this order. GRF shall determine the correct DPS amount after hearing both the Petitioner and CESU. However, this cannot be a ground for withholding the current bill by the Petitioner. The Respondent must deal with the issue of non-payment of current dues as per law. Once the arrear amount is finalized after revision of the bill for the period from 01.06.2002 to 01.09.2006 by the GRF, it shall also be payable or shall be adjusted in the bill. Some matters which the Petitioner is raising here refer to the period other than the period mentioned above and are extraneous to this proceeding because we are dealing with the matter of non-compliance of the order of the Commission in Case No. 29/2014 dated 21.07.2015 arising out of the direction of Hon'ble High Court in WP (C) No. 7274/2019 dated 04.04.2019.
12. With this observation, the case is disposed of.

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

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