

**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. 57/2019

M/s. Falcon Marine Exports Ltd.,	Petitioner
Vrs.		
The E. E (Elect.), BED, Rasulgarh, CESU, Bhubaneswar	Respondent

In the matter of: **Application under Section 142 of the Electricity Act, 2003 for contravention of Regulation 80 (5) (iii) of the OERC Distribution (Conditions of Supply) Code, 2004 and directions of the Commission in the ARR & Retail Supply Tariff orders of the Distribution companies.**

For Petitioner: Shri R. P. Mahapatra, Authorised representative and Shri M. Swain.

For Respondent: Shri B. K. Nayak, Advocate and Shri Manoj Das, AGM (Elect.), BED, CESU.

ORDER

Date of hearing: 07.01.2020

Date of order: 14.01.2020

The petitioner M/s. Falcon Marine Exports Ltd. has filed the above case under Section 142 of the Electricity Act, 2003 against the Executive Engineer (Elect.), Bhubaneswar Electrical Division, CESU for contravention of Regulation 80(5) (iii) of the OERC Distribution (Conditions of Supply) Code, 2004 and also the directions of the Commission in the ARR and Retail Supply Tariff orders.

2. The petitioner has been operating a fish processing and storage unit and has availed power supply under LI Category from 11.6.2002 with contract demand of 450 KVA. The initial power supply agreement with CESU was terminated on 09.09.2008 and was replaced with a fresh agreement for the same quantum of power with new classification of consumer as Agro Industrial category. Further, basing on the amended Regulation 80(5)(iii) of the OERC Distribution (Conditions of Supply) Code, 2004, the agreement was restated again on dated 05.01.2012 with the same CD of 450 KVA but under Allied Agro Industrial Activities category. In the year 2017 the petitioner applied for additional connected load of 217 KW (290 HP) to the existing connected

load of 538 KW totalling to 755 KW. The respondent vide its letter on 18.11.2017 issued permission for installation of additional 500 KVA transformer of 11/0.4 KV (plinth mounted) with 11 KV metering facility to provide additional load along with the existing load. Accordingly, the work was executed by the petitioner based on the estimate of the respondent on payment of 6% supervision charges. After physical verification on 02.07.2018, the respondent issued a letter to the petitioner classifying the consumer as GP Tariff category in place of existing Allied Agro Industrial Activities category and asked the consumer to execute the agreement accordingly as the nature of business of the consumer includes both freezing and processing of fish i.e. (Cold storage and processing unit). The Respondent further intimated that to be categorized under Agro Industrial category the processing load should be within 20% of the CD as per the RST orders of the Commission from 2012-13 to 2015-16. But in this case the processing load was 77% of the connected load and therefore, after load enhancement the petitioner shall not be categorized under Allied Agro Industrial Activities category tariff under Clause 82 of OERC Code 2004. After that the respondent unilaterally changed the tariff category to GPS from Allied Agro Industrial category for the consumption during the month of Feb, 2019 and the petitioner under protest has been paying the electricity bills under Allied Agro Industrial Activities category. The petitioner in its letter dated 11.04.2019 requested the respondent for re-verification of the load by the third party. After re-verification of load on 20.08.2019, the respondent vide his letter dated 07.09.2019 intimated the petitioner that the total load was found to be 614.14 KW out of which 481.69 KW was processing load and therefore the reclassification made w.e.f. Feb, 2019 in GPS category is justified.

3. The petitioner has submitted that the application of the petitioner for additional load submitted in the year 2017 was almost totally for increase in the cold storage activity. Here, there is no increase in the connected load for processing activities; hence the action of the respondent to change the tariff category of the consumer is in contravention of the provisions of the OERC Distribution (Conditions of Supply) Code, 2004 along with the directions in the ARR & RST orders of the Commission for the different years.
4. The Respondent has filed its reply on 14.10.2019 stating therein that the petitioner applied for load enhancement from on 12.09.2017 for which permission was issued on 18.11.2018. After physical verification of load, it was found that the processing load

forms 77% of the total CD and hence Allied Agro Industrial Activities category tariff is no more applicable as per Para 258 of the RST Order for FY 2012-13 of the Commission. Letter was issued to the petitioner for reclassification of consumer category as GPS Tariff category instead of Allied Agro Industrial Activities category basing on the physical verification report which was also acknowledged by the representative of the petitioner. The respondent has further submitted that the present petition is an individual grievance of the consumer against the licensee, hence not maintainable before this Commission as the petitioner has not exhausted grievance redressal mechanism with filing its grievances before GRF/Ombudsman and approaching the Commission directly.

5. After hearing of the parties and perusal of the case records, we find that this is a dispute between consumer and the Licensee CESU. The Commission under Section 86 (1)(f) of the Act is only mandated to adjudicate the dispute between licensees and the Generating companies. Therefore, for resolution of this type of dispute, the Commission has framed Regulations for establishment of Grievance Redressal Forum and Ombudsman under 42 (5) & (6) of the Electricity Act. As a result, the original jurisdiction for resolution of this type of dispute lies with concerned GRF established under the Act. In this connection we refer to the decision of Hon'ble APTEL in *Dakshin Harayan Bijli Vitran Nigam Ltd. Vs. DLF Service Ltd.* (2007 APTEL 764) where Hon'ble APTEL has observed that

“The State Commission in law cannot usurp either the jurisdiction of the Grievance Redressal forum or the Ombudsman. In respect of the grievance of the consumers, the specific forum or redressal and representation to a higher authority are provided under Section 42 (5) and (6) of the Electricity Act, 2003 and the Regulatory Commission has no jurisdiction apart from the fact it is either the appointing authority or the authority conferred with the powers to frame regulations, and not even an appeal power has been conferred on the State Commission with respect to consumer grievance.

The Regulatory Commission could exercise jurisdiction only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise on facts and in the law. All these statutory provisions conferring jurisdiction on the redressal forum, thereafter to approach the Ombudsman, it follows that the State Commission has no jurisdiction to decide the dispute raised by the consumers.”

6. We refer also to another decision of Hon'ble Supreme Court (*Maharashtra State Electricity Distribution Company Ltd. v. Lloyds Steel Industries Ltd.*, AIR 2008 SC 1042) where Hon'ble Court has observed that

“In exercise of this power the State has already framed The Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as “2003 Regulations”) and created consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in the cases of Suresh Jindal V. BSES Rajdhani Power Ltd. and Ors., 132 (2006) DLT 339 (DB) and we approve of these decision. Hence wherever a Forum/ Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act.

Sub-section (1) (f) of the said Section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42 (5) and thereafter Section 42 (6) read with Regulations of 2003 as referred to hereinabove.(Maharashtra State Electricity Distribution Company Ltd. v. Lloyds Steel Industries Ltd., AIR 2008 SC 1042.)”

7. Basing on the above judgments of the Hon’ble APTEL and Hon’ble Apex Court we refrain ourselves from interfering in the above matter since appropriate forums are available which have been constituted under Section 42 (5) & (6) of the Electricity Act, 2003 for redressal of all the individual grievances of the consumers. Therefore, the Petitioner is at liberty to approach those forums if they desire so.
8. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson