

**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
 Shri G. Mohapatra, Member**

Case No. 38/2020

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

In the matter of: **Application under S. 142 of the Electricity Act, 2003 for Non-Compliance of the order dated 14.08.2019 of OERC passed in Case No. 36/2019 and also for violation of RST order along with Reg. 64 of OERC Distribution (Condition of Supply) Code, 2004.**

For Petitioner: Shri Lalit K. Maharana, Advocate

For Respondent: The Executive Engineer (Elect.), CED, Balasore.

ORDER

Date of hearing: 08.09.2020

Date of order: 15.09.2020

M/s. Raja Flyash Bricks, Balasore has filed the above case under Section 142 of the Electricity Act, 2003 for violation of RST order of the Commission since 2005-06 onwards and Regulation 64 of the Distribution (Conditions of Supply) Code, 2004 against the E.E(Elect.), CED, NESCO Utility, Balasore.

2. Due to the prevalence of pandemic COVID-19, the matter is taken up for hearing through video conferencing. The counsel for the petitioner submits that he had filed Case No. 26 of 2019 before the Commission on the self same ground and the Commission while disposing of the said case vide its order dated 14.08.2019 had observed that :-

“Heard the parties and perused their written notes of submissions which are taken into record. The Commission observed that the order dated 07.11.2017 passed in Case No. 15/2017, 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 for supposedly unauthorised consumption. But, in the present case overdrawal penalty has been imposed by the respondent, without the penalty under Section 126 of the Electricity Act, 2003. Hence, it is a case of billing dispute between the petitioner and the respondent herein. Our Regulations and Retail Supply Tariff orders have amply dealt with such matters. Therefore, the petitioner should approach the proper forum of law for resolution of such billing dispute.

With the above observation, the case is disposed of.”

3. According to the above order of the Commission, the petitioner approached the GRF, Balasore in C.C. Case No. 143 of 2019 and the GRF while disposing of the said consumer complaint has observed that in connection with the same issue, the matter is pending before the Hon’ble High Court of Orissa in W.P.(C). No. 10153 of 2014.
4. The petitioner further submits that W.P.(C). No.10153 of 2014 is different from the present issue as the said case involves revision of bills against MMFC as per recorded maximum demand but not for over drawal penalty for consumers having CD 110 KVA and above. After being aggrieved with the said order of the GRF, the petitioner had approached the Ombudsman challenging the said order in CR Case No.30 of 2019 before the Ombudsman-II. The Ombudsman-II vide its order dated 31.01.2020 while disposing of the above CR Case had observed as follows:

“in view of the above facts and circumstances, this Authority is of the opinion not to accede to the Petitioner’s representation for directing the respondent to withdraw the over drawal penalty /or proceed any further into the matter now, in view of the fact that the final decision of the Hon’ble High Court of Orissa in the above matter is yet to come and which principle will be binding to both the parties.”

5. The respondent in its reply has submitted that the order of the GRF, Balasore dated 30.09.2019 passed in CC Case No.143 of 2019 arising out of order passed by the Commission in Case No. 26 of 2019 is completely against the petitioner. The order of the Ombudsman-II passed in CR Case No.30 of 2019 is also completely against the petitioner. Therefore there has been nothing to implement of the above orders by the respondent.
6. The counsel for the petitioner prays for withdrawal of the present case as the matter is sub-judice before the Hon’ble High Court in W.P.(C). Nos. 10153 of 2014 and 29408 of 2011 on the similar grounds.
7. It appears that consumer is aggrieved with the orders of GRF/Ombudsman for which he can approach proper forum of law. Prayer of the petitioner for withdrawal of the case is allowed as the respondent has no objection.
8. The case is dismissed as withdrawn.

Sd/-

(G. Mohapatra)
Member

Sd/-

(S. K. Parhi)
Member

Sd/-

(U. N. Behera)
Chairperson