

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

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**Present: Shri G. Mohapatra, Chairperson (Offg.)
 Shri S. K. Ray Mohapatra, Member**

Case No. 120/2021

M/s. Utkal Chamber of Commerce & Industry Ltd.	.....	Petitioner
Versus		
GRIDCO & another	.....	Respondents

In the matter of: Application under Section 86(1)(f) of the Electricity Act, 2003 thereby seeking appropriate directions not to requisition power from Vedanta Ltd. from January, 2022 onwards and create a strict protocol to be followed in future for the purpose of adhering to the mandate of the order dated 05.10.2021 of OERC passed In Case No. 34 of 2018 regarding requisition any power from M/s. Vedanta Ltd.

AND

Case No. 121/2021

Shri Susanta Kumar Nayak	.....	Petitioner
Versus		
GRIDCO & another	.....	Respondents

In the matter of: Application under Section 86(1)(a), (b),(f) & (k) of the Electricity Act, 2003 thereby seeking appropriate directions not to requisition power from Vedanta Ltd. from January, 2022 onwards and create a strict protocol to be followed in future for the purpose of adhering to the mandate of the order dated 05.10.2021 of OERC passed In Case No.34 of 2018 regarding requisition any power from M/s. Vedanta Ltd.

AND

Case No. 128/2021

Shri Swayam Prakash Nayak	.....	Petitioner
Versus		
GRIDCO & Another	.....	Respondents

In the matter of: Application under Section 86(1)(a), (b),(f) & (k) of the Electricity Act, 2003 thereby seeking appropriate directions not to requisition power from Vedanta Ltd. from January, 2022 onwards and create a strict protocol to be followed in future for the purpose of adhering to the mandate of the order dated 05.10.2021 of OERC passed In Case No.34 of 2018 regarding requisition any power from M/s. Vedanta Ltd.

For Petitioners: Shri S. K. Padhi, Sr. Advocate on behalf of Petitioner M/s. UCCI, Case No.120/2021, Shri Prasanta Kumar Nayak, Advocate on behalf of both the petitioners in Case Nos.121 & 128 of 2021.

For Respondents: Shri R. K. Mehta, Advocate along with Shri P. K. Das, CGM (PP) and Ms. Susmita Mohanty, DGM (PP) on behalf of GRIDCO Ltd.
Shri Hemanta Singh, Advocate and Shri Mridul Chakravarty, Advocate on behalf of M/s. Vedanta Limited.

ORDER

Date of hearing: 01.02.2022

Date of order:07.02.2022

This order arises out of three petitions, one filed by the Petitioner Utkal Chamber of Commerce and Industry Ltd. represented through its President, the second one filed by the Petitioner Shri Susanta Kumar Nayak and the third one filed by the Petitioner Shri Swayam Prakash Nayak.

2. In the petition filed by the Petitioner Utkal Chamber of Commerce and Industry Ltd., the following prayer has been made:
 - (a) Analyse the power availability/procurement portfolio of GRIDCO as to whether any power from Vedanta is required to be scheduled keeping in mind negative impact on the end-consumers, in terms of the principles contained in the order dated 05.10.2021 passed by this Hon'ble Commission in Case No. 34 of 2018;
 - (b) Direct the Respondent No.1/GRIDCO not to requisition power from Vedanta from January 2022 onwards, in terms stated in the present petition;
 - (c) Create a strict protocol to be followed in future by the Respondent No.1/GRIDCO for the purpose of adhering to the mandate of the order dated 05.10.2021 passed by this Hon'ble Commission in Case No.34 of 2018, before it decides to requisition any power from the Respondent No.2/Vedanta, and,
 - (d) Pass any other and further order or orders as this Hon'ble Commission may deem fit and proper under the peculiar facts and circumstances of the present case and in the interest of justice.
3. To avoid prolixity, it is stated that the similar prayer has been made by the Petitioner Shri Susanta Kumar Nayak in Case No.121/2021 and the Petitioner Shri Swayam Prakash Nayak in Case No.128/2021. For sake of convenience, the above stated three petitions have been heard together as they relate to the same subject matter and are disposed of by this common order.
4. The background of the petitions is stated as follows:-

The Respondent No.2 M/s. Vedanta Ltd. filed Case No.34 of 2018 before this Commission, thereby seeking declaration of IPP Unit-II as a CGP Unit, which would supply power to its Smelter-I & Smelter-II. The Commission vide its Order dated 05.10.2021 in the said case, had allowed conversion of Unit-II into captive generating unit in terms of Rule 3 of the Electricity Rules, 2005. It was also directed by the Commission that the State would have the option to avail power from the Vedanta Ltd. (Respondent No.2 of this proceeding) for which a three (3) months' prior notice is to be given by the Respondent No.1/GRIDCO and for supply of such power, the Respondent no.2 shall operate as an IPP and utilize linkage coal. Since GRIDCO Ltd., Respondent No.1 has made a requisition of power from M/s. Vedanta, Respondent No.2 for the period commencing from January, 2022 to March, 2022, the petitioners above-named in their petitions have unequivocally urged before the Commission to disallow Respondent No.1/GRIDCO Ltd. (Respondent No.1 in Case No.34 of 2018) from procuring power in IPP mode from M/s. Vedanta Ltd cited as Respondent No.2 in this proceeding. It averred by the Petitioners that procuring power from M/s. Vedanta Ltd.-Respondent No.2 by the Respondent No.1-GRIDCO Ltd. will affect the interest of end-consumers.

5. At this point, it appears pertinent to state here that M/s. GRIDCO Ltd.-Respondent No.1 entered upon appearance on receipt of notice of this Commission and has raised preliminary objection of maintainability of the prayer of the Petitioners and the maintainability being the core question, the same is taken up.
6. In short, it is stated that M/s. Vedanta Limited, Respondent No.2 has taken the stand of supporting the prayer submitted by the Petitioners of all the above-named three cases.
7. Upon the so called preliminary objection of GRIDCO, Respondent No.1, the Commission framed preliminary issue as under:

Whether all the Cases/Petitions of the Petitioners are maintainable in law?

8. To give findings on the preliminary issue, the Commission heard the parties in extenso. At this stage, the Commission went through the provisions of Section 86(1) of the Electricity Act, 2003 under which the petitioners have filed the petitions at hand. For the purpose of clarity and better understanding, the provisions of Section 86(1)(a) (b) (f) and (k) are reproduced as follows:-

Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

xx xx xx xx

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

xx xx xx xx

(k) discharge such other functions as may be assigned to it under this Act.

xx xx xx xx

9. It is submitted on behalf of the Petitioners that there is no justification of power procurement by M/s. GRIDCO Ltd.-Respondent No.1 from M/s. Vedanta Ltd.-Respondent No.2. Per contra, on behalf of M/s. GRIDCO Ltd.-Respondent No.1, it is vehemently contended that M/s. GRIDCO Ltd. being the State Designated Entity, is mandated to safeguard consumer interest while procuring power from different sources and that these petitions have been filed by the Petitioners with oblique motive and the petitions if allowed, will cause huge amount of disadvantage to the consumers of the State of Odisha. The issues raised in the petitions pertain to a dispute inter parties between GRIDCO and Vedanta Ltd. and there is no question of any public interest or public policy or morals or statutory regulations being violated.

10. On the other hand, the Petitioners have contended that the maintainability of the Petitions should not be taken up as a preliminary issue and the Petitioners have urged for consideration of the whole dispute covering all other aspects raised in their petitions.

Similar stand has been projected by M/s. Vedanta Ltd.-Respondent No.2 supporting the Petitioners.

11. It is settled law that the State Electricity Regulatory Commission being a statutory body created under the Electricity Act, 2003 is obligated to act within the four corners of the said Act. The State Electricity Regulatory Commission does not have jurisdiction akin to

a Writ Court so as to entertain Public Interest Litigation. The 2003 Act does not envisage filing of a Public Interest Litigation (or invoking an adjudicatory function on behalf of others) for adjudication of disputes. At this point, it is apposite to state that in the case of Bharat Jhunjhunwala Versus Uttar Pradesh Electricity Regulatory Commission and Ors. (Civil Appeal Nos.7303-7304 of 2012, a note of caution has been issued by the Hon'ble Supreme Court in their order dated 19.08.2013 in the following words:

“ Since the public Interest Litigation was not maintainable before the U.P. Electricity Regulatory Commission, we find no reason to entertain these appeals, which are, accordingly, dismissed.”

12. Further, the Hon'ble Supreme Court in the case of Maharashtra Electricity Regulatory Commission Versus Reliance Energy Limited & Ors. reported in A.I.R. 2008 S.C. 976 : (2007) 8 SCC 381 and Maharashtra State Electricity Distribution Co. Ltd. Versus Lloyds Steel Industries Limited, reported in A.I.R. 2008 S.C. 1042 has held that disputes of individual consumers cannot be adjudicated by the Commission under Section 86(1)(f) of the Electricity Act, 2003.
13. Under the aforesaid scenario, the Petitioners have failed to demonstrate any entertainable cause of action so as to attract the jurisdiction of the Commission under Section 86(1) (a), (b), (f) and (k) of the Electricity Act, 2003. This Regulatory Commission is not vested with any authority under Section 86(1) (a), (b), (f) and (k) of the Electricity Act, 2003 to entertain the prayer moved by the Petitioners and as such, the Petitions are rejected as not maintainable.
14. These Petitions/Cases are accordingly disposed of.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Chairperson (Offg.)