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

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

Case No. 61/2021

M/s. Specimen Holdings Limited	……	Petitioner
Vrs.		
The E.E (Elect.), BED, TPSODL, Berhampur	……	Respondent

In the matter of: **Proceeding on remand by the order dated 18.03.2021 of the Hon'ble High Court of Orissa in W.P.(C) No. 36399 of 2020.**

AND

In the matter of: **Application under Section 56 (2) of the Electricity Act, 2003 challenging the order dated 20.07.2018 of the GRF-Berhampur passed in Case No. 172/2018 and order dated 17.12.2019 of the Ombudsman-II passed in C.R. Case No. 190/2018.**

For Petitioner: Shri B. Panigrahi, Advocate

For Respondent: Shri Prabhat Kumar Kar, Executive Engineer (Elect.), BED-1, TPSODL, Berhampur along with Deputy Manager (Law), TPSODL.

ORDER

Date of hearing: 28.09.2021 **Date of order:25.10.2021**

1. The brief fact of the case is that the petitioner M/s. Specimen Holding Ltd., Apollo Clinic, Main Road, Bhabanagar, Berhampur is a general purpose HT consumer under the jurisdiction of Opp No.1, Executive Engineer (Elect.), BED-I, SOUTHCO, Berhampur at present TPSODL bearing Consumer No.BHPC/1-0061 (1618 GP). The petitioner had executed an agreement with SE (Elect.), City Circle, SOUTHCO, Berhampur on 22.08.2011 for power supply to his Apollo Clinic with a contract demand (CD) of 140 KW, 156 KVA. The opposite party No.1 had given the power supply in the name of one Sri Sangram Kumar Mohanty, Managing Director of M/s. Specimen Holdings Ltd., Bhabanagar, Berhampur and was serving the bill to the petitioner as per his consumption with CD of 156 KVA. Two months thereafter, the petitioner could find that his consumption in the month of November-2011 and December-2011 was less than his existing contract demand of 156 KVA. So he requested OP No.1 vide letter dated 07.01.2012 to reduce his contract demand to 110

KVA from 156 KVA. Accordingly, the OP No.1 went on serving the bills to the petitioner at CD load of 110 KVA for the period from January, 2012 to December, 2017 and in turn, the petitioner paid the bill amount for the said period.

2. The Petitioner had been paying Rs.1000/- per month towards meter rent w.e.f. 23.11.2011. Since the Petitioner had paid the meter cost, he requested OP.-1 to refund the meter rent paid by him from November, 2011 till November, 2016 and serve the bill without meter rent thereafter. But that was not considered by OP. -1. Thereafter, the OP No.1 vide his letter No.763 (5) dated 01.02.2018 intimated the petitioner regarding revision of his bill for the period from January, 2012 to December, 2017 mentioning therein that the erroneous billing had been done on the CD of 110 KVA for the said period, as a result of which, SOUTHCO sustained loss of revenue due to less claim of demand charges. The said bill had been revised from the date of power supply to the month of December, 2017 and accordingly an amount of Rs.6,64,240/- was demanded from the petitioner towards differential claim of monthly demand charges. Further, it was indicated in the said letter that the same amount would be debited in his bill for the month of February, 2018. Being aggrieved by the above actions of the Opposite party the Petitioner had approached GRF, Berhampur in Case No. 172/2018. The Learned GRF directed that since the cost of 11 KV cable and cubicle metering system had been deposited by the Petitioner so the differential amount collected for 11 KV cable and cubicle metering has to be refunded in shape of adjustment in future energy charge bill.

3. In consideration of the above prayers, Learned GRF, Berhampur in their order in Case No. 172/2018 dated 20.07.2018 directed as follows:

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"l. After verification of estimate, it is found that, the estimated amount towards 11 KV cable and cubicle metering has been deposited by the complainant. But, it is confirmed that 11 KV metering unit has been installed. So the differential amount as mentioned above has to be refunded in shape of adjustment in future energy charge bills.

2. The meter rent shall be claimed for 60 months as per the clause 448 of tariff order 2016-17. Once it is collected for 60 months, the meter rent collection should stop.

3. The erroneous monthly demand charges billing has been detected by the respondent and claimed the differential demand charges, as per contract demand and as determined in tariff notification. So the revised demand

charges shall be payable by the consumer as he has not applied for reduction of contract demand as per regulation 66 at any time.

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4. Challenging the jurisdiction of the Learned GRF, Berhampur and legality of the order dated 20.07.2018 passed by the Learned GRF, the Petitioner filed a representation on 19.10.2018 before the OP No.2 Ombudsman-II with the prayer to quash the order dated 20.07.2018 passed by the Learned GRF, Berhampur in GRF Case No.172/2018.

Considering the above prayers of the petitioner, Ombudsman (II) ordered as follows:

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"On scrutiny of all documents submitted by both the parties and after going through the arguments thereof by them this Authority is of the opinion that the revised bills mentioned in the letter No. 2249(4) dtd.01.02.2018 and letter No. 763(4) dtd.20.03.2018 issued to the petitioner by the respondent are valid in law and hence this Authority does not find any defect in the observation of the learned GRF, Berhampur in their Order dt.20.07.2018 in Case No. 172/2018 in this issue. Hence, this Authority finds that the differential demand charges bill of Rs.6,64,240.00 raised by the respondent to be valid in law and will be payable by the petitioner."

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"1) The respondent is directed to refund the differential amount of cubicle meter and 11 KV metering unit along with interest @1% per month.

2) The respondent is directed to refund the full meter rent collected from petitioner along with interest @1% per month to the petitioner."

The respondent is directed to revise the bills of the petitioner and serve the revised bill to the petitioner within 30 days from the date of receipt of letter of acceptance from the petitioner and file compliance to this Authority within 45 days."

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5. Being dissatisfied with the order of Ombudsman-II, the petitioner knocked at the door of Hon'ble High Court of Orissa in WP(C) No.36399/2020 for redressal of his grievances. By the order No.5 dated 29.04.2021 passed in IA No.6597/2021 arising out of WP(C) No.36399/2020, a direction was issued by the Hon'ble High Court to this Commission with the following orders:

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"2. This application has been filed by the petitioner for modification of the order dated 18.03.2021 passed by this Court In I.A. No.3059 of 2021 arising out of WP(C) No.36399 of 2020.

3. Learned counsel for the petitioner submitted that in the order dated 18.03.2021 on his prayer, it has been mentioned that the Managing Director Orissa Electricity Regulatory Commission Bhubaneswar shall consider and dispose of the application of the petitioner as per Section 56 (2) of the Electricity Act.

2003 within a period of four weeks from the date of the order. He further submitted that the Commissioner, Orissa Electricity Regulatory Commission, Bhubaneswar is the necessary party to consider the application of the petitioner instead of the Managing Director, Orissa Electricity Regulatory commission, Bhubaneswar as such the aforesaid order may be modified to the above effect.

4. Considering the above, we modify the order dated 18.03.2021 passed in I.A. No.3059 of 2021 to the effect that the Commissioner, Orissa Electricity Regulatory Commission. Bhubaneswar Opposite Party No.3 shall consider and dispose of the application of the petitioner as per Section 56 (2) of the Electricity Act. 2003 within a period of four weeks from today. The rest part of the order dated 08.01.2021 shall remain unaltered."

6. Since a direction has been issued by the Writ Court, the same has to be honoured in letter and spirit. Accordingly, the present case was registered and taken up for hearing.

7. The OP Executive Engineer, Berhampur entered appearance, filling the objection stating inter alia that the petitioner executed an agreement for a contract demand of 156 KVA under HT tariff and accordingly billed for two months i.e. for the month of November, 2011 and December, 2011 and the demand charges had been claimed for 124.8 KVA (80% of 156 KVA). But from January, 2012 onwards erroneously the bill had been done on the contract demand of 110 KVA and the demand charges had been claimed for 80 KVA inadvertently instead of 124.8 KVA without any further agreement. The Petitioner being a HT supply consumer, he has to pay the demand charges as per the agreed rate. On detection of such erroneous billing, the bill of the petitioner had been revised and the differential demand charges claim of Rs.6,64,240/- was debited against the bill of the Petitioner for the month of February, 2018 which was to be paid by the petitioner for the bill period from January, 2012 to December, 2017 on the actual contract demand of 156 KVA instead of 110 KVA which was claimed erroneously. The claim of the Petitioner that he had applied for reduction of contract demand on 07.01.2012 to 110 KVA is false and fabricated. According to the OP No.1, short claim of demand charge came to the knowledge of OP during December, 2017 and therefore the differential demand charges had been made and intimated to the consumer vide letter No. 763 (5) dated 01.02.2018. The OP. No. 1 has further stated that the claim of demand charges is not barred by limitation in the eyes of law as Provided in the Regulation 94(2) read with Regulation 100(2) of the OERC Distribution (Conditions of Supply) Code, 2004 and Section 56(2) of the Electricity Act, 2003 and rather it became due, when it is raised in the bill and the period of limitation commences only when mistake is detected. So the claim of differential

charges made by the OPP No.1 was not illegal, unjustified and the petitioner is liable to pay the same. Thus, the present petition is not maintainable under law and therefore liable to be dismissed.

8. Heard the parties. In the above background of cases of both the parties and the decisions made thereon by the Learned GRF and Learned Ombudsman respectively, this Commission formulates the following issues for determination for complete adjudication of the disputes between the parties.

(I) Whether the petitioner-consumer is liable to pay the electricity charges to the OP No.1-licensee for the period from January, 2012 to December, 2017 at the CD load of 156 KVA as per the agreement dated 22.08.2011 entered with the OP No.1-licensee or as per the CD load of 110 KVA as per the alleged request/application of the petitioner dated 07.01.2012?

(II) Whether the order of the Ombudsman in respect of refund of differential cost of cubicle meter and 11 KV metering unit and interest thereon and refund of the full amount of meter rent collected from the petitioner along with interest of 1% per month to the petitioner appear to be justified or not?

Issue No. (I)

9. Relying upon the copy of a typed application dated 07.01.2012, the petitioner claims that he had applied to the OP No.1 on such date for reduction of CD load from 156 KVA to 110 KVA. He noticed during the month of November, 2011 and December, 2011 that his consumption was less than 156 KVA although he had made agreement with OP No.1 to consume CD load of 156 KVA. On the contrary, the OP No.1 is not admitting the said letter of the petitioner dated 07.01.2012 and OP No.1 is claiming that their office has no such record in respect of such claim of the petitioner. According to us, the said copy of the application dated 07.01.2012 contains no endorsement of any employees of the OP to believe it beyond doubt and suspicion. Besides, the petitioner has failed to produce any acknowledgment receipt issued by any employees/Supply Engineer of OP No.1 to reinforce his stand. Similarly, no extract of the official ledgers/registers of the OP No.1 has been obtained by the petitioner under the RTI Act, wherefrom, it can be presumed that the petitioner had applied for alleged reduction of CD load from 156 KVA to 110 KVA. Under the

circumstances, the stand taken by the petitioner appears to be unbelievable and said copy of the application dated 07.01.2012 is a paper without any worth.

10. Though the petitioner relied upon the bill received by him from the month of January, 2012 to December, 2017 claiming that the OP has reduced the CD load from 156 KVA to 110 KVA and accordingly served the bills for the said period, the OP No.1has taken the stand that those bills have been prepared erroneously taking load of the petitioner to be 110 KVA in place of 156 KVA and hence, the petitioner is liable to pay for availing the electricity connection for actual CD load of 156 KVA. The same stand of the OP cannot be ignored in as much as in some of the cases, such type of mistakes/errors do crop up while preparing the bills.

11. As per the Regulation 66 (2) of the OERC Distribution (Conditions of Supply) Code, 2004, no application for reduction in contract demand shall be entertained within three months from the date of commencement of initial or revised supply unless the agreement provides otherwise. Here, the petitioner's date of power supply was 22.11.2011 and as per his claim, he had applied for the alleged reduction of contract demand on 07.01.2012 i.e. within three months of his taking power supply. So, the same short of alleged application of the petitioner-consumer to the OP-licensee is totally against the aforesaid Regulation of the OERC.

Accordingly, we are of the view that the alleged application of the petitioner, if any, does not get sanction of law. On that score, the petitioner is not entitled for reduction of CD load from 156 KVA to 110 KVA for the period from January, 2012 to December, 2017. Resultantly, therefore, the petitioner is liable to pay the electricity charges at the CD load of 156 KVA from January, 2012 to December, 2017.

Learned GRF and Learned Ombudsman rightly observed that the petitioner is liable to pay the energy charges of the CD load of 156 KVA during the said period. In these ways, this issue is decided against the petitioner.

12. Alternatively, it is submitted on behalf of the petitioner that the supplementary bills issued by the OP No.1 with the demand of Rs.6,64,240/- for the first time on 01.02.2018 claiming the bill on the basis of differential demand charges of 46 KVA (156 KVA – 110 KVA) is barred by limitation as per Section 56(2) of the Electricity Act, 2003 and Regulation 94 (2) and 100 (2) of the OERC Distribution (Conditions of Supply) Code, 2004. According to him, the said amount was not continuously shown

as arrears on the petitioner and after lapse of two years from the date of its first due, the same amount is barred by limitation. But we are not in agreement with such submission of the Learned Counsel for the Petitioner, as here in this case, the petitioner resorted to illegal practice as he knowingly did not approach the OP No.1 for the payment of electricity bill for the agreed CD load of 156 KVA and went on paying for at a CD load of 110 KVA which was beyond his agreement. Besides, the said Section 56 (2) of the Electricity Act, have been clearly interpreted by the Hon'ble Supreme Court of India in their judgement reported in (2020) 4 Supreme Court Case 650/ Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. Vrs Rahamatullah Khan alias Rahamjulla wherein it has been held as follows:

> *"The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid.*
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> *Electricity charges would become "first due" only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity."*
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> *"The period of limitation of two years would commence from the date on which the electricity charges became "first due" under sub-Section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period.*
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> *If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became "first due", it would defeat the object of Section 56(2)."*
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> *XXX XXX XXX*
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> *"Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.*
>
> *As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time."*

From the above dictum of the Hon'ble Supreme Court of India, we hold that the petitioner under the guise of reduction of his CD load is challenging the supplementary bills of the OP No.1 and thereby intending to put the OP No.1 at huge loss. Further, when the petitioner goes on consuming the electricity at the CD load of

156 KVA and there has been no contrary agreement showing reduction of CD load from 156 KVA to 110 KVA, for all purposes, he is to be considered as HT consumer at the CD load of 156 KVA. At this point, it can be reasonably stated that the petitioner having entered into contractual liability for consumption of electricity at the CD load of 156 KVA, cannot be legally permitted to make unjust enrichment for any erroneous bill issued by the OP No.1

13. The Learned Counsel for the petitioner citing the case laws invokes the concept of promissory estoppel for the purpose of negating the claims of the OP No.1 in respect of contract demand of 156 KVA. In this connection, it can be reasonably stated that the concept of promissory estoppel has no role to govern the dispute raised before us. Rather, the statutory provisions under Section 70 of the Indian Contract Act will govern the gamut of the dispute. In view of the spirit enshrined under Section 70 of the Indian Contract Act, the petitioner is bound to make payment of the electricity charges for the CD load of 156 KVA instead of 110 KVA and accordingly the above submission of Learned Counsel for the Petitioner fails.

In view of the foregoing discussions, the petitioner cannot escape from payment of electricity bill for 156 KVA load for the period from January, 2012 to December, 2017.

Issue No. (II)

14. Admittedly, no cubicle meter has been installed by the OP No.1 in the premises of the petitioner/consumer. In its place, one 11 KV plain meter has been installed. But it is submitted on behalf of the petitioner that he has paid the cost of 11 KV cubicle meter at the time of taking electricity connection. Even after payment of cost of the said meter, he has been saddled with meter rent which is not in consonance with the Regulation 56(2)(b) and 87 of the OERC Distribution(Conditions of Supply) Code, 2004 which is stated as follows:

"Regulation 56(2)(b) – Alternatively, consumer may choose to pay the full cost of the meter provided by the licensee. No meter rent shall be chargeable in such cases."

"Regulation 87 – No meter rent shall be chargeable in case where consumer has supplied the meter or the consumer has paid the full cost of the meter provided by the licensee or during the period the meter supplied by the licensee remains defective. Bills shall be prepared for each category on the basis of the information provided in the prevailing tariff order."

In view of aforesaid statutory provision and taking into consideration that 11 KV metering unit has been installed by the OP No.1, it is incumbent upon the OP No.1 to refund the differential cost of 11 KV cable and cubicle metering and metering unit to the Petitioner if not paid in the meantime along with 1% interest per month in the future energy bill, as per the order of the Learned Ombudsman-II.

Besides, the OP No.1 is also liable to refund the meter rent collected from the petitioner on its entirety along with 1% interest per month as has been held by the Learned Ombudsman-II). So in our considered opinion, the Learned Ombudsman-II has rightly passed the order in the said light. Accordingly, this issue is decided in favour of the petitioner against OP No.1.

15. In terms of our above findings, the remand case of the petitioner is disposed of with the reliefs granted to the parties as mentioned under the Issue No. (I) and Issue No. (II). Parties are at liberty to make calculations of bill based on adjustment of the sums payable.

Sd/-	Sd/-	Sd/-
(G. Mohapatra)	**(S. K. Parhi)**	**(U. N. Behera)**
Member	**Member**	**Chairperson**