

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

Present: Shri G. Mohapatra, Officiating Chairperson
Shri S. K. Ray Mohapatra, Member

Case No. 67/2021

M/s. Kamadhenu Agro Based Ind.(P) Ltd. Petitioner

Vrs.

The Executive Engineer (Elect.),
Baripada Electrical Division, TPNODL,
Baripada, District Mayurbhanj. Respondent

In the matter of: **Application under Section 142 of the Electricity Act, 2003 for non-compliance of order dated 24.05.2019 of the Ombudsman-II passed in C.R.Case No.04 of 2019.**

For Petitioner : Shri Tushar Behera, the authorized representative.

For Respondent : Shri Kanhu Charan Sardar on behalf of the Executive Engineer (Elect.), AED, TPCODL, Athagarh.

ORDER

Date of Hearing: 27.12.20212

Date of Order:27.12.2022

M/s. Kamadhenu Agro Based Ind.(P) Ltd., Bishnupur, P.O:Jugal, Baripada, Mayurbhanj has filed the present petition under Section 142 of the Electricity Act, 2003 for non-compliance of order dated 24.05.2019 of the Ombudsman-II passed in C.R. Case No.04 of 2019. The learned Ombudsman-II while disposing of C. R. Case No.04 of 2019 has passed the following order:

“ In view of the above facts and circumstances, the case of the petitioner is disposed of with the aforesaid observation reiterating the immediate implementation of the Order of the GRF order in the matter”.

2. Before approaching Ombudsman-II, the Petitioner had filed Case No. 197 of 2018 before GRF, Balasore who passed the following order:-

In the above facts and circumstances, the Forum finds it appropriate to direct respondent to :

- (1) The respondent cannot claim the transformer loss from the consumer.*
- (2) The respondent will refund the cost of check meter by way of adjustment in the energy bill.*
- (3) The respondent will refund the cost of the meter to the complainant.*
- (4) The respondent can claim the meter rent provided by them from the consumer as specified by the State Commission.*
- (5) According to section 47(1) of Electricity Act, 2003, A consumer is required to give security for the price of meter provided by the Distribution licensee as determined by Regulations notified by the State Commission.*

3. Since the above orders of GRF, Balasore and Ombudsman-II have not been complied with by the Respondent, the dispute was carried before the Hon'ble High Court of Orissa in WP(C) No.12735/2019.
4. In course of hearing, the Respondent submits that being aggrieved by the order of the GRF, Balasore in C.C.Case No.197 of 2018 as well as order of the Ombudsman-II passed in C.R.Case No.14 of 2019, the Respondent has challenged the above orders before the Hon'ble High Court of Orissa in W.P.(C) No.12735 of 2019. But the Hon'ble Court has disposed of the above writ petition vide their order dated 26.08.2022 with following observations:-

“ x x x .

20. As from the order of OMBUDSMAN-II [Annexure-6 to this writ petition], we have failed to find out that in the counter affidavit any objection was raised as regards the limitation in filing the said Consumer Representation case by the consumer for non implementation of the order dated 11.12.2018. In the said proceeding the direction has been made to implement the said order within 30 days from the date of receipt of it. Even though in this petition, that issue relating to limitation has been raised but we do not find the details when the order from the GRF was received by the petitioner and when the stipulated period of 30 days for implementation had expired and when the consumer had filed the Consumer Representation Case before the OMBUDSMAN-II or anything material whether the OMBUDSMAN-II had taken any exercise or whether the OMBUDSMAN-II had satisfied with the explanation if there was any delay at all. Therefore, we discard this challenge on the basis of delay. However, we hold that on the basis of sustainability of the order dated 11.12.2018 as passed by the GRF, operability the order of the OMBUDSMAN-II would depend. On 26.10.2021,

this Court had passed interim order of stay in respect of the orders of the GRF and the OMBUDSMAN-II subject to conditions in I.A. No. 10093 of 2019 arising from this petition. The interim order reads as follows;

“As an interim measure, it is directed that, there shall be interim stay of operation of the impugned order in G.R.F. C.C. No.197 of 2018 of the Grievance Redressal Forum, vide Annexure-4 & Judgment dated 24.05.2019 of the OMBUDSMAN-II, O.E.R.C., Bhubaneswar in Consumer Representation Case No.Omb(II) N-04 of 2019, vide Annexure-6, till the next date, subject to the condition that, there should not be disconnection of power to the unit of Opposite Party No.1, if he goes on paying the current dues.”

The said interim order continues till date.

21. There has been no meaningful examination of the observation and direction of the GRF so far the transformer loss is concerned. The G.R.F. has observed that in terms of the Regulation 93(3) of the OERC Distribution (Condition of Supply Code), 2004 the G.R.F has raised its finding only by placing the consumer [the Opposite Party No.1] at par with the general class of consumers who get electricity from the common transformer. But it is an admitted fact that the consumer has installed his own dedicated transformer with due permission. As such, the loss for transmission of electricity through the dedicated transformer has to be accounted and for that purpose, in the condition of supply, the formula available under Section 93 (3) of the said code has been adopted. The bills are raised and those are paid by the consumer till the complaint had raised the objection. The controversy could emerge because at the relevant point of time, the HT Meters were not available. Therefore, the charges of the electricity used to be deduced in terms of the reading of the meters installed in the premises of the consumer by adding the said transformer’s loss. As such, the inference is drawn by the GRF that no transformer loss can be levied on the consumer in as much as the consumer is drawing the power below 70 KVA. Hence, the transformer loss cannot be added in the energy bills any more.

22. The observation, as referred above, is grossly erroneous as there is no controversy that the consumer has been drawing the electricity from HT line through their own dedicated transformer. When there was no HT meter, admittedly, before the transformer but only the LT meters was installed in the premises of the consumer after the transformer, the transformer loss is sought to be gathered by the formula provided under Regulation 93 (9) of the said Code, 2004 and only after acceptance of the said formula as the Condition of Supply, the supply commenced.

23. In this regard, we may refer to Regulation 54 (3) of the Code, 2004 which provides that in the case of all new high-tension supplies, HT metering units shall be provided and installed. In case where LT metering unit is provided at L.T. side, all L.T. metering units shall be converted to H.T. metering units. For existing L.T. metering units connected on the L.T side of the consumer’s transformers, the reading of such metering units,

shall be added with the average loss in the transformers calculated in terms of the formula given thereunder. As such, the opinion that no transformer loss can be charged on the consumer if it is below 70 KVA is without any tangible basis. Even it has not been demonstrated that the consumer had asked for reassessment on terminating the conditions of supply.

24. The petitioner as the Distribution Licensee started supplying Electricity confirming to the conditions of supply. Such finding of the GRF is therefore, interfered and struck down.

25. So far the question of refund of cost of Check Meter is concerned, it has been observed by the GRF that it is nowhere mentioned in the Regulation that for installation of check meter in the

premises of the consumers the consumer can be changed. This observation is again erroneous as the GRF did not take care of the relevant provisions governing when and how the check meter can be installed. Such provision is available in Regulation 57 on the said Code of 2004. Regulation 57 provides that a consumer may, after giving notice to the Engineer, get a check meter installed at his own expenses in his incoming line by the side of the licensee's meter. In case of the differences in reading between the licensee's meter and the consumer's check meter, the readings of the licensee's meter shall be taken to be conclusive. The consumer may demand the licensee's meter to be tested by the Electrical Inspector whose decision shall be final and binding on the consumer and the licensee. The consumer shall be required to pay a fee for such testing. If the meter is found incorrect after testing, the fee paid by the consumer shall be refunded by the licensee by way of adjustment in the next bill. If the meter is found correct after testing, the fee paid by the consumer shall be forfeited by the licensee.

26. It has been provided further by the proviso below the said Regulation that even if the meter is supplied either by the licensee or by consumer, if the Engineer suspects about the accuracy of the meter, the Engineer may by giving 24 hour notice to the consumer install a check meter tested and duly sealed in a Government Laboratory either by the side of the original meter within the premises of the consumer or at such other places as may be decided by the Engineer to test the accuracy of the meter and in that case, the reading records in the check meter can be treated as of the original meter for the purpose of ascertaining the consumption made by the consumer, which will be conclusive, in the event.

27. On analysis of the above provisions, it appears that there can be two situations broadly-when the meter reading is suspected by the Consumer and the other is the meter reading is suspicious by the Engineer. The check meter is installed by the person who suspects the meter reading. If any difference is found in the meter reading, the consumer may demand that the licensee's meter or the meter installed in the premises be tested in the designated laboratory and when the check meter is installed by the engineer, the provision as available in the proviso below Regulation 57 would apply. Therefore, in the considered opinion of this Court, it is the obligation of the

person who suspects to provide the check meter and to get it installed. If the check meter is given by the consumer as in the present case, the consumer is not entitled to get back the value of the check meter. However, if the check meter is provided by the Distribution Licensee and realised the value of it, they shall refund the value of the check meter itself to the consumer.

28. In this case, if the check meter has been taken away by the Distribution Licensee, (the petitioner) they must refund the value of the said meter to the consumer in as much as, they were not supposed to take that meter in their possession for a very limited purpose of the sealing and testing before its installation. Therefore, the direction of the GRF is modified in the following terms; If the check meter has been taken by the Distribution Licensee (the petitioner) value of the same shall be refunded to the consumer or the said value would be adjusted with their energy bills at the option of the Distribution Licensee (the petitioner) but if the check meter has not been taken by the Distribution Licensee (the petitioner), the consumer will not be entitled to get any value of the said check meter.

29. So far the direction in respect of the refund of the cost of the meter and the meter rent are concerned, we would modify the said direction in the following terms:

If the meter that was installed inside or outside of the premises of the consumer was provided by the consumer defraying its cost, no rent for the meter shall be charged by the Distribution Licensee. However, if at any point of time, the meter is installed by the Distribution Licensee (the petitioner), the Distribution Licensee is entitled to realise the appropriate security against the value of the said meter from the consumer. Further the Distribution Licensee (the petitioner)

can also realise the meter rent as per the rate as approved by the State Electricity Regulatory Commission. But under no circumstances the Distribution Licensee (the petitioner) can realise the price of the meter from the consumer and thereafter can go for realising the meter rent.

30. The observation regarding Section 47(1) of the Electricity Act, 2003 as returned by the GRF is affirmed as there is no error at all, warranting interference from us.

31. Having observed thus, the writ petition stands partly allowed to extent as observed above.

32. There shall be no order as to costs.

33. Before parting with the records, it is directed that in terms of our order, if anything is required to be implemented and any direction of the GRF as modified by us requires to be implemented, such implementation shall be carried out within a period 30 days from the date of receipt of this order.”

5. After disposal of the above writ petition by the Hon’ble Court, the Respondent has taken steps for implementation of the orders of the Forums as modified by the Hon’ble High Court of Orissa in W.P.(C) No.12735 of 2019 and accordingly, the matter has been sent

to their Head Office for approval and after approval by the higher authority, the same would be complied with. Therefore the Respondents prays the Commission to allow 15 days more time for compliance of the said order and further submits to drop the present proceeding initiated under Section 142 of the Electricity Act, 2003.

6. The authorized representative of the petitioner has conceded to the above submissions of the Respondent.
7. Since the Petitioner has accepted that the Respondent has taken steps for compliance of the order as referred to above in his case, and on the assurance of the Respondent regarding implementation of the orders of the Forums as modified by the Hon'ble High Court of Orissa in W.P.(C) No.12735 of 2019, we hereby drop the present proceeding initiated under Section 142 of the Electricity Act, 2003 with a direction to the Respondent to carry out the order of the Hon'ble High Court in letter and spirit forthwith.
8. With the above observations, the case is disposed of.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Officiating Chairperson