

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

**Present: Shri U. N. Behera, Chairperson
 Shri G. Mohapatra, Member**

Case No. 99/2021

M/s. OPGC Ltd.	Petitioner
Vrs.		
M/s. GRIDCO Ltd. & Others	Respondent

In the matter of: **Application under Condition 94 (1) (f) of the Electricity Act, 2003 with Regulation 70 (1), 76, 78 & 79 of the OERC (Conduct of Business) Regulations, 2004 along with Regulation 13 of the OERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 seeking review and modification of order dated 03.11.2021 of the Commission passed in Case No. 66/2021.**

For Petitioner: Shri Jafar Allam, Advocate, MD, OPGC and Shri Haresh Satpathy, DGM (R&C)

Respondents: Shri A K Mishra, Legal Head, GRIDCO, Shri V. Wagle, TPCODL, Shri K C Nanda, GM (Fin.), TPWODL, Ms. Malancha Ghose, AGM (RA), TPNODL, Shri B. Nayak, AGM (Com.), TPSODL, Ms. Sonali Patnaik, ALO, DoE, GoO and Shri R P Mahapatra

ORDER

Date of hearing: 04.01.2022

Date of order: 15.01.2022

The petitioner, Odisha Power Generation Corporation Ltd. (OPGC) has filed the present review petition seeking a review and modification of the order dt. 03.11.2021 passed by OERC in Case No.66 of 2021.

2. The Commission in its order dt. 03.11.2021 had accorded in-principle approval of capital cost for renovation and modernization work (R&M) and installation of Flue-gas Desulphurization system (FGD) and Flue-Gas Cleaning (FGC) for the units 1 & 2 (2X210 MW) of OPGC, to extend the life of the plant and supply power to GRIDCO for an additional 15 years beyond the present Bulk Power Supply Agreement.
3. OPGC has submitted that the Commission in the aforesaid order has allowed R&M but disallowed the proposal for construction of new Ash Pond with an expenditure of 140 Cr. However, the proposal of extension of life of plant is contingent upon the new Ash Pond and the plant cannot be operated without a new Ash Pond as the existing

Ash Pond will be exhausted before June, 2026. OPGC has submitted that the entire R&M of the plant will not be possible and the order will be futile if the proposed construction of Ash Pond is not allowed. Further, the power generated after the R&M of the plant with the new Ash Pond will also be cost effective.

4. OPGC has submitted that installation of FGD & FGC is required to meet the revised emission standards as prescribed by Ministry of Environment and Forest and Climate Change (MoEF & CC) for units 1 & 2 of the plant. The Commission has allowed the R&M but disallowed Rs.140 cr. towards the construction of new ash pond and directed OPGC to use the existing ash pond and comply the mandate of 100% ash utilization in line with the notification of MoEF & CC.
5. OPGC has submitted that the observations of the Commission in its order dt.03.11.2021 is contrary to the fact & records submitted earlier and also to the principle of cost –plus regime envisaged under Section 62 of the Act. Further, disallowance of such investment has denied the legitimate claims towards R&M, which would have been granted otherwise in terms of Tariff Regulations.
6. OPGC has submitted that the ash pond is an integral part of a thermal generating station to store ash generated as a by-product in the process of electricity generation. Ash is generated on a continuous basis during power generation. Its utilization occurs over an extended period of time as the demand for ash is neither available readily nor on continuous basis. The demand for ash for cement manufacturing and construction is irregular and seasonal for which ash is stored in the ash pond. The plants that achieve 100% ash utilization also require ash pond.
7. OPGC has submitted that the Consultant IRC Engineering conducted the Remaining Life Assessment (RLA) study and also observed that the existing ash pond is going to be exhausted by December, 2024 and can be stretched further by one and half years with higher ash utilization.
8. OPGC submitted that the Hon'ble Supreme Court has stayed the penalty imposed by Ld. National Green Tribunal ("Ld.NGT") for non-compliance of 100% ash utilization contemplated in MoEF & CC notifications understanding the genuine difficulties being faced by the thermal generators in complying it.
9. OPGC has submitted that they have made sincere efforts to facilitate 100% fly ash utilization and have taken various reasonable steps such as installation of fly ash brick

plant, supply of fly ash for construction at Belpahar, extending transportation subsidy to the parties interested to take fly ash, conducted awareness campaign in its nearby areas etc. for the purpose. However, despite their best efforts due to certain factors which are beyond their control, the petitioner has submitted that adequate storage space is required to store the fly ash. Therefore, the Commission may approve the prayer for construction of ash pond with an investment of the Rs.140 cr.

10. In view of the above, OPGC has prayed the Commission to allow the review petition, modify the order dt. 03.11.0221 and approve the proposed capital expenditure of Rs.140 cr. for construction of a new ash pond.
11. Respondent, GRIDCO in this case has not submitted its views and stated that the Commission may take the prudent decision, which they will adhere & implement.
12. The Respondent, Sri R. P. Mahapatra, has submitted that OPGC should have achieved 100% fly ash utilization latest by 2014 in view of MoEF & CC, Government of India Notification in 1999, 2003 and 2009 with reference to sale of fly ash to the users. Additional cost should not be considered because of failure of OPGC to meet the mandatory requirements. The consumers of the State should not bear the tariff burden due to investment of Rs.140 cr. because of non-compliance by OPGC of MoEF&CC rules. Further, OPGC has enjoyed huge benefits in variable charges on application of tariff parameters of the PPA based on the judgment of the Hon'ble Supreme Court and fixed charges based on Government of Odisha Notification in 2008. OPGC may utilize the surplus cash available with them for construction of ash pond. The Commission may not allow the proposed expenditure, which has become necessary solely on account of failure by OPGC.
13. Sri Mahapatra has further submitted that OPGC may approach the Commission with a separate petition for any relief in view of the recent notification of MoEF & CC dt. 31.12.2021. Further, the present ash pond C has adequate capacity to accommodate disposal of ash beyond 30.06.2026 in case 80% of ash is utilized progressively by 31.03.2025 starting from 01.04.2022. Therefore, after 100% utilization of new ash by 31.03.2027, the existing ash pond can have adequate capacity to work as temporary/emergency ash pond for units 1 and 2. Further, the DPR is not having the details of the proposed ash pond. Therefore, the Commission may not accept their proposal.

14. Sri Mahapatra has submitted that no ash pond will be required and the existing ash pond can be adequate to function as temporary/emergency ash pond upto 2041 in case of adherence of the MoEF&CC notification dt.31.12.2021 by OPGC. Further, NGT in its order dt.12.02.2020, considering the report of Joint Committee as per the direction of Hon'ble Supreme Court has directed all non-compliant thermal generators to deposit EC. This shows that all the thermal generators are duty bound to achieve 100% ash utilization over a specific period. Further, there is no necessity of construction of new ash pond even if the MoEF & CC notification is taken into consideration. Hon'ble Supreme Court has only stayed the orders of NGT imposing EC on non-compliant thermal generators and mentioned nowhere regarding the liability of utilization of 100% of ash. Hence, OPGC may file a separate petition giving full details of size and estimate of new ash pond after the disposal of civil appeal by Hon'ble Supreme Court.
15. In its rejoinder, replying to the objections of Respondent and compliance to the orders of the Commission during hearing OPGC has submitted that the ash ponds of Unit-3 and 4 cannot be used since the capacity of those ash ponds will be exhausted by 2025 even with the extension of height. Further, huge capital expenditure is required for installation of high-capacity pumps required for pumping out the lean slurry with high water content generated from units 1 & 2. Also there is a requirement of laying of 10 KMs long pipelines for transporting the slurry of Unit 1 & 2. OPGC submitted that as per Hon'ble Supreme Court order OPGC cannot achieve 100% of ash utilization and therefore cannot be penalized. OPGC has not been able to achieve 100% ash utilization in spite of their best efforts since the supply of ash is far more than its demand.
16. OPGC has further submitted that the notification dt.31.12.2021 of MoEF & CC changes the law applicable to all thermal power producers as regards to the utilization of fly ash. The proposal of R&M is contingent upon the approval of cost for new ash pond. The plant cannot be operational without a new ash pond as the exiting ash pond will be exhausted before June 2026. OPGC has prayed for early approval to go ahead with final tendering process of the R&M package.
17. Heard the parties. The written notes of submission were also taken into record. As per Section 94 (1) (f) of the Electricity Act, 2003, this Commission has the same power as are vested with the Civil Court under the Code of Civil Procedure, 1908 in respect of reviewing its decisions, directions and orders among others. As per Order 47 Rule 1 of

the Civil Procedure Code, review of an order can be made on the following grounds: (a) Error apparent on the face of the record; (b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake; (c) any other sufficient reason. The Commission observed that the review petition is not permissible except for extraordinary circumstances. It is seen that the Notification No. 5481(E) dated 31.12.2021 issued by the MOEF&CC, Government of India imposing conditions of 100% clearance of fly ash for the project was not duly pressed before this Commission during the course of earlier hearing. Therefore, it attracts review of our order due to the reason as stated above. Fly ash is an environmental hazard and is likely to pose a risk to the health and hygiene of the people. Article 51(A) (g) of the Constitution of India mandates that every citizen shall strive for improvement of the environment which otherwise imposes a collective responsibility of the community for averting any environmental hazards. In the present scenario, it is seen that if the prayer for expenditure on construction of a new ash pond is disapproved, the review petitioner may not be able to construct a full-fledged ash pond on the pretext of paucity of fund which is most likely to lead to a situation resulting in defeating the above value propounded by the Constitution of India. It is otherwise seen that the construction of an ash pond of the review petitioner will facilitate generation of thermal power for next 15 years without any obstacle. These may be treated as sufficient reasons for approval of expenditure for construction of a new ash pond.

18. In view of the above, since the construction of new ash pond is required to meet the stipulations/standards prescribed by the notification of the MoEF & CC dt.31.12.2021, the Commission accords in-principle approval for construction of new ash pond in respect of generating units 1 & 2 of OPGC and the Commission further directs OPGC to make all reasonable endeavours to keep the cost towards construction of new ash pond at the minimum.
19. Further, in line with the MoEF & CC notification, treating the statutory obligation of 100% ash utilization as a change in law, we opine that OPGC is primarily responsible for 100% utilization of fly ash and bottom ash generated by it in an eco-friendly manner. In no case, shall utilisation fall below 80 per cent in any year, and shall achieve average ash utilisation of 100 per cent in a three years cycle. The ash generated shall be utilised only for the following eco-friendly purposes, namely:-

- (i) Fly ash based products viz. bricks, blocks, tiles, fibre cement sheets, pipes, boards, panels;
- (ii) Cement manufacturing, ready mix concrete;
- (iii) Construction of road and fly over embankment, Ash and Geo-polymer based construction material;
- (iv) Construction of dam;
- (v) Filling up of low lying area;
- (vi) Filling of mine voids;
- (vii) Manufacturing of sintered or cold bonded ash aggregate;
- (viii) Agriculture in a controlled manner based on soil testing;
- (ix) Construction of shoreline protection structures in coastal districts;
- (x) Export of ash to other countries;
- (xi) Any other eco-friendly purpose as notified from time to time.

Further, the unutilised accumulated ash i.e. legacy ash, shall be utilised progressively in such a manner that the utilization of legacy ash shall be exhausted completely within ten years. OPGC should ensure that loading, unloading, transport, storage and disposal of ash is done in an environmentally sound manner and that all precautions to prevent air and water pollution are taken and status in this regard shall be reported to the State Pollution Control Board (SPCB) or Pollution Control Committee (PCC). It is directed that OPGC shall install dedicated silos for storage of dry fly ash for at least sixteen hours of ash based on installed capacity and send the same to SPCB or PCC and provide real time data on daily basis of availability of ash with Thermal Power Plant (TPP), by providing link to Central Pollution Control Board's web portal or mobile phone App for the benefit of actual user(s).

Apart from the above, OPGC should adhere to the stipulations as prescribed in the aforesaid notification of MoEF.

20. Accordingly, the case is disposed of.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Member

Sd/-
(U. N. Behera)
Chairperson