

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

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

Case No. 02/2022

GRIDCO Ltd.	Petitioner
Vrs.		
M/s. Vedanta Ltd. & Others	Respondents

In the matter of: Application under Section 142 & 146 of the Electricity Act, 2003 read with Regulations, 2004 for non-compliance of order dated 05.10.2021 of the Commission passed in Case no.34 of 2018..

For Petitioner: Shri R. K. Mehta, Advocate on behalf of GRIDCO.

For Respondents: Shri Sanjay Sen, Sr. Advocate, Shri Hemanta Singh, Advocate and Shri Lakshya Badwal, advocate on behalf of M/s. Vedanta Limited, the representative of SLDC, Shri K. C. Nanda, DGM (Fin.) of TPWODL, Ms. Sonali Patnaik, ALO, DoE, GoO, and Shri Bijay Das, GM (RT&C), OPTCL.

ORDER

Date of hearing: 25.01.2022

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1. The matter was listed for hearing through Video Conferencing. We have heard all the parties on video conferencing.
2. The petitioner has filed this application under Section 142 and Section 146 of the Electricity Act, 2003 read with Regulation 70 of the Odisha Electricity Regulatory Commission (Conduct of Business) Regulation, 2004 praying therein;
 - a) To initiate appropriate action under Section 142 and Section 146 of the Electricity Act, 2003 against the Respondent no.1 for its wilful, deliberate and flagrant violation of order dated 05.10.2021 passed by the Commission in Case no.34 of 2018.
 - b) Issue direction to Respondent No.1 to forthwith submit day ahead declared capacity (DC) in favour of the GRIDCO, in terms of Para-30(b) of the Commission's order dated 05.10.2021 to meet the State demand in the larger interest of the consumers.
 - c) Issue necessary direction to the Respondent no.1 to ensure procurement of linkage coal for the period of 01.01.2022 to 31.03.2022 from MCL and the Fuel Supply Agreement (FSA) to operate its Unit-II as IPP, in view of requisition of the petitioner dated 05.11.2021 without fail and for such other orders.

3. The Petitioner pleaded that vide order dated 05.10.2021 in Case No. 34 of 2018, the Commission permitted the Respondent No.1 to operate its State Dedicated Unit#II (600 MW) normally as a CGP. The Commission allowed the petitioner to draw power from Unit#II under exigency as per the PPA. The petitioner issued requisition for IPP power in terms of order dated 05.10.2021 vide letter dated 05.11.2021 and had reiterated the same through its letter dated 29.12.2021. It is alleged that Respondent No.1 despite order of Commission and requisition by the petitioner, in terms of order did not supply power and thereby flouted the order of the Commission. It is the case of the petitioner that GRIDCO as State Designated Entity requires power and the Commission having made provision there for, non supply of required power by the Respondent No.1 does occasion huge problem for the petitioner to discharge its obligation to the general public. It is the case of the petitioner that the State requires additional power and failure on the part of Respondent No. 1 is causing public inconvenience. It is further submitted on behalf of the petitioner that compensation by Respondent No.1 for procuring power is no suitable remedy against power shortage crisis.
4. The Respondent No.1 filed its counter denying all the allegations and assertions, disputing the claim of the petitioner and questioning the maintainability of the proceeding. According to the Respondent No.1, the Commission vide its order dated 05.10.2021 in Case No. 34/2018 has converted the Unit-II of Vedanta to CGP clearly observing that there is surplus power available with the Petitioner-GRIDCO and surrendering Vedanta Power would reduce its fixed cost burden. But the Petitioner-GRIDCO vide its letter dated 05.11.2021 has requisitioned its full entitlement from Vedanta wherein the prudence of requisition of power has not been brought out in the letter. It is further stated that there is surplus power situation in the State and accordingly, the petitioner has got no vested right to ask the Respondent No.1 to provide power to it. The Respondent No.1 claimed that the PPA dated 19.12.2012 is no longer in force, so as to enable the petitioner to seek power from the Respondent No.1. It is claimed that once a unit is declared as a CGP, as per the current linkage policy, it cannot avail coal for the purpose of supply. Respondent No.1 urged to dismiss the prayer of the Petitioner-GRIDCO.
5. Respondent No.3 TPWODL in its counter has presented facts of the power sector scenario in the State and has proposed for prudent exercise of option in the matter of power purchase. Respondent No.5 OPTCL submitted the written reply at a very belated stage and the same is not taken into consideration. However, Respondent No.5 has participated in the hearing.

6. For sake of clarity, it is stated here that in spite of adequate opportunity Respondent No. 2, and 4 have not submitted any pleadings though they have participated in the hearing.
7. In the rejoinder, the Petitioner-GRIDCO has spelt out fallibility of the grounds taken by Respondent No.1-Vedanta.
8. For the purpose of brevity, the operative portion of the Order dated 05.10.2021 in Case No. 34 of 2018 is reproduced:

“Accordingly, considering the submission of parties and basing on the above analysis we allow GRIDCO to operate its PPA without losing its entitlement under the same.

- (a) *The Unit-II of M/s. Vedanta shall normally operate as CGP. If in any quarter, GRIDCO requires power from M/s. Vedanta for State consumption they can avail the same giving three months prior notice to M/s. Vedanta and avail the same for a period of at least three months. During that period the CGP will operate as IPP and GRIDCO will be required to pay fixed cost for the said period in addition to energy charge and other charges.*
- (b) *During IPP mode of operation, quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7%/5% (at variable cost) of total energy sent out from the power station (4x600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.*
- (c) *During IPP mode of operation, the coal used for generating power for State entitlement shall be linkage coal/captive mines allocated to the petitioner for state use.*
- (d) *If M/s. Vedanta fails to supply power after requisition by GRIDCO within the stipulated period, M/s. Vedanta will compensate GRIDCO by paying the differential cost incurred by GRIDCO for such drawal at margin over and above cost of normal power purchase from M/s. Vedanta IPP Unit-II.*
- (e) *If at any time it is found that M/s. Vedanta has failed to supply IPP power after requisition by GRIDCO and is trading the same, M/s. Vedanta will have to pay, in compensation, two times the differential cost incurred by GRIDCO at margin over and above the IPP power cost from M/s. Vedanta.*
- (f) *In order to prevent dislocation in the current supply of power, the Unit-II will continue as IPP for the current quarter. GRIDCO has to exercise its option to avail IPP power from M/s. Vedanta for the next quarter within one month of this order failing which the IPP Unit-II of M/s. Vedanta shall operate as CGP with effect from the 1st of January, 2022. Thereafter, as stated in sub-para (a) above, GRIDCO will have to give three months prior notice for availing power in any quarter.*
- (g) *The option of GRIDCO to avail IPP power shall be prudently exercised in order to minimize the total power purchase cost and shall be scrutinized by the Commission at any time.”*

9. In view of the rival submissions, the following points are to be answered.

- 1) Whether the petition filed by the Petitioner/ GRIDCO is maintainable ?
- 2) To what other relief, the Petitioner is entitled ?

Both the points are taken together for discussion for the sake of clarity and convenience of the stake holders.

10. The order dated 05.10.2021 as aforesaid having not been challenged by either side, both the sides are bound by the same. Of course, the Petitioner-GRIDCO has sought for a review of the same vide Case No. 129 of 2021 which is sub-judice. In that review petition, the Petitioner has prayed for recalling the Order dated 05.10.2021. Though review application is yet to be disposed of, this application of the Petitioner can be reasonably decided basing upon the averments and materials on record. But what it appears, the urge of the Petitioner-GRIDCO for review is confined to the aspect of the observations made in the said order regarding surplus power available to the Petitioner-GRIDCO. Hence, notwithstanding the Review petition referred to above, both the sides are required to carry out the directions issued vide paragraph 30 of the Order dated 05.10.2021.

11. The petitioner-GRIDCO had sought for implementation of the order dated 05.10.2021 especially the directions issued vide the sub-para (b), (c) and (f) of the paragraph 30. In course of hearing, lengthy arguments have been advanced by the rival sides and it is emphasized by the Respondent No.1 – Vedanta that the direction issued vide sub-para (g) of the paragraph 30 has not been followed by the petitioner-GRIDCO while issuing requisition for IPP power. Under the aforesaid sub-paras, the Commission while directing the petitioner-GRIDCO to be prudent in exercise of its option to avail IPP power, retained the power with itself (OERC) to scrutinize at any time such exercise of option, in order to find out whether or not the norm of minimizing the total power purchase cost is duly complied with by the Petitioner – GRIDCO in exercise of option to avail IPP power from the Respondent No.1-Vedanta. The direction or stipulation as above is backed by the reasoning cited in paragraph 29 of the same order. The above being nature and spirit of the direction under sub para (g) of paragraph 30, the Respondent No. 1 – Vedanta can hardly use the same to oppose the move of the Petitioner-GRIDCO for implementation of the order in so far as it relates to the direction issued to it (M/s. Vedanta). Needless to mention that it remains within the province of this Commission to order a scrutiny of the option exercised by the Petitioner-GRIDCO, when felt necessary.

12. Admittedly the Petitioner-GRIDCO has issued requisition on 05.11.2021 and no follow up has been taken so far by the Respondent No.1 to comply with the same in terms of the directions issued in the order 05.10.2021 regarding supply of power. In the context, the Commission takes note of a deviation on the part of the Petitioner-GRIDCO vis-à-vis the stipulation made in sub-para (f) of paragraph 30 of the Order dated 05.10.2021 as to the time of issuance of requisition. Although as per the stipulation, the petitioner-GRIDCO ought to have exercised its option within one month of the order i.e. on or before 04.11.2021, the requisition was issued on 05.11.2021. Needless to mention that a prior notice is given or ordered to be given with a view to enable the noticee to get itself prepared to comply with the requirements. Although the above deviation has not been agitated/pointed out by the Respondent No. 1, the same weighs in the mind of this Commission while taking up the question as to whether there has been defiance or violation of the order or direction issued or whether any compensatory relief is available to be granted to the Petitioner.

13. On behalf of the petitioner the following case laws have been relied upon

- (i) Commissioner, Karnataka Housing Board Vrs. C. Muddaiah, (2007) of SCC 689
- (ii) Indian Charge Chrome Ltd. Vrs. Union of India (2005) & SCC 67
- (iii) N. Birendra Singh Vrs. L. Priya Kumar Singh (2006) 9 SCC 650
- (iv) Rashmi Rekha Thatoi Vrs. State of Orissa (2012) 5 SCC 690
- (v) State of T.N. Vrs. K. Shyam Sundar (2011) 8 SCC 737
- (vi) Noorali Babul Thanewala Vrs. K.M.M. Shetty (1990) 1 SCC 259

In essence, the above stated case laws enunciate the principles of adjudication of disputes before the adjudicating body.

14. On behalf of the Respondent No.1 the following case laws have been referred.

- (1) Bhagwat Sharan Vrs. Purushottam (2020) 6 SCC 387
- (2) Rajasthan State Industrial Development & Investment Corpn. Vrs. Diamond & Gem Development Corpn. Ltd. (Rajasthan State Industrial Development & Investment Corpn. V. Diamond and Gem Development Corpn. Ltd., (2013) 5 SCC 470: (2013) 3 SCC (Civ) 153: AIR 2013 SC 1241.
- (3) Karam Kapahi V. Lal Chand Public Charitable Trust [Karam Kapahi V. Lal Chand Public Charitable Trust, (2010) 4 SCC 753: (2010) 2 SCC (Civ) 262]
- (4) Union of India and Others V. N. Murugesan, reported in 2021 SCC OnLine SC 895.

Though the aforesaid Case laws referred on behalf of Respondent No.1 do lay down salient principles of adjudication, it is doubtful if the above stated Case laws can be completely followed without distinguishing the peculiar factual scenario of this proceeding.

15. The order dated 05.10.2021 under the subject is self contained as to the relief(s) granted, obligations cast and consequences of non-discharge of the obligations. In that view of the order sought to be implemented and in the circumstances indicated above, it is ordered as follows:

- (i) The notice/requisition dated 05.11.2021 issued by the Petitioner-GRIDCO to Respondent No.1-Vedanta which has not been complied with by the latter (M/s. Vedanta) has been rendered ineffectual.
- (ii) Since the Petitioner-GRIDCO has already issued requisition dated 31.12.2021 for availing of Vedanta-IPP power for the 2nd quarter 2022 (April, 2022 to June 2022), the same shall be duly complied with by the Respondent No.1-Vedanta in view of the directions contained in sub-para (a) of the Paragraph 30 of the Order dated 05.10.2021
- (iii) If the Petitioner-GRIDCO requires power for any subsequent quarters/period of time three months prior notice shall be given to Respondent No.1 Vedanta and both the sides shall carry out the directions issued vide Order dated 05.10.2021 under the subject without deviation
- (iv) If the Respondent No.1 Vedanta fails to supply power after requisition is issued by the Petitioner-GRIDCO pursuant to the order dated 05.10.2021 read with the present order, the directions contained in the sub-para (d) and (e) of the paragraph 30 of the Order dated 05.10.2021 and other directions as found applicable, shall come into play.

16. With the aforesaid observations made and directions issued as above, the application under Section 142/146 of the Electricity Act, 2003 read with Regulation 70 of the Odisha Electricity Regulatory Commission (Conduct of Business) Regulation, 2004 stands disposed of.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Chairperson