

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BUDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751021  
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**Present: Shri G. Mohapatra, Officiating Chairperson  
Shri S K Ray Mohapatra, Member**

**Case No. 08/2022**

M/s. Vedanta Ltd. .... Petitioner

Vrs.

SLDC & Others ..... Respondents

**In the matter of:** Application under Section 33 (4) read with S. 86 (1) (f) & (k) of the Electricity Act, 2003 for quashing of emails dated 01.01.2022 & 03.01.2022 issued by TPWODL and letter dated 07.01.2022 issued by GRIDCO Ltd. and email dated 25.01.2022 and a direction to SLDC to accept the energy accounting Schedule as submitted by the petitioner.

**For Petitioner:** Ms. Supriya Rastogi, Advocate and Shri Harshit Singh, Advocate

**For Respondents:** Shri R. K. Mehta, Sr. Advocate and Ms. Himanshi Andley, Advocate on behalf of GRIDCO Ltd., Shri K. C. Nanda, GM (RA & Strategy), TPWODL and the Representative of SLDC

**ORDER**

**Date of hearing: 22.11.2022**

**Date of order: 07.12.2022**

The Petitioner, M/s. Vedanta Limited has filed the present petition under Section 33 (4) read with Section 86 (1) (f) & 86 (1) (k) of the Electricity Act, 2003 for quashing of emails dated 01.01.2022 & 03.01.2022 issued by TPWODL and letter dated 07.01.2022 issued by GRIDCO Ltd. and email dated 25.01.2022 of SLDC and issue direction to SLDC to accept the revised energy accounting as submitted by the petitioner vide its letters dated 03.01.2022 & 28.01.2022.

2. The petitioner, M/s. Vedanta Ltd. has submitted that :

- a) The Commission vide its order dated 27.01.2016 passed in Case No.21/2015 had allowed conversion of Units 1, 3 & 4 of the petitioner's thermal power plant as CGPs , while Unit-2 was mandated to remain as IPP for supply state share of power to GRIDCO under the PPA dated 19.12.2012. Subsequently, the Commission vide its order dated 05.10.2021 passed in Case No.34 of 2018 has

allowed that the Unit 2 of the petitioner's plant to normally operate as CGP w.e.f. 01.01.2022. In this order it was indicated that if in any quarter GRIDCO requires power from M/s. Vedanta Ltd. for State consumption, they can avail the same giving three months prior notice to M/s. Vedanta Ltd. and can avail the same for a period of at least three months. During that period the CGP unit will operate as an IPP unit. In this regard, GRIDCO issued a letter dated 05.11.2021 to the petitioner seeking supply power from 01.01.2022. In the said order dated 05.10.2021, it is stipulated that the option of availing power has to be prudently exercised by GRIDCO in order to minimize the total power purchase cost in the State, which was not at all mentioned by GRIDCO in its letter dated 05.11.2021. Therefore, the petitioner, vide its letter dated 10.11.2021, had requested GRIDCO to withdraw the said letter dated 05.11.2021 with subsequent reminders dated 30.11.2021 and 14.12.2021. Without any response and clarity from GRIDCO, the petitioner did not requisition for linkage coal accordingly. However, on 29.12.2021 i.e. just two days before the date of availing requisitioned power, GRIDCO issued a letter stating that it is not required to demonstrate the prudence check to the petitioner and as such the petitioner should supply power to GRIDCO from 01.01.2022. In response, the petitioner vide its letter dated 31.12.2021 agreed to supply 50 MW power to GRIDCO for the interest of the state. This 50 MW power was the surplus power available with the petitioner after meeting its captive requirements and the said power was supplied to the extent of linkage coal available with the petitioner.

- b) However, based on the order dated 05.10.2021, the petitioner, vide its letter dated 03.01.2022, submitted its revised energy accounting scheme to the respondent SLDC by considering the Unit 2 as a CGP. The SLDC did not respond to this letter of the petitioner. However, the petitioner received the emails dated 01.01.2022 & 03.01.2022 from the respondent TPWODL, wherein it was stated that there is mismatch between the schedule of drawal and the actual drawal of power by the petitioner. This occasioned as the TPWODL did not accept the revised energy accounting given by the petitioner considering all the four units as CGP. Further, GRIDCO has also issued a letter dated 07.01.2022 to the petitioner whereby it chose not to accept the schedule of the petitioner by making wrongful allegation that the petitioner mis-declared its capacity.

- c) Meanwhile, GRIDCO filed a petition before this Commission as Case No.2/2022 alleging non-compliance of the Commission's order dated 05.10.2021 by the petitioner. The Commission vide its order dated 25.01.2022 in Case No.2 of 2022 has rendered the notice/requisition dated 05.11.2021 of GRIDCO ineffectual taking note of the deviation on the part of GRIDCO to the time of issuance of requisition. As per the stipulation made in sub-para (f) of paragraph 30 of the order dated 05.10.2021 passed by this Commission, GRIDCO ought to have exercised its option within one month of the order i.e. on or before 04.11.2021. In view of the said order of the Commission, the power plant of the petitioner is to operate as CGP.
- d) However, SLDC issued an e-mail dated 25.01.2022 i.e. on the day of passage of the aforesaid order of the Commission, asking the petitioner for realistic day-ahead declared capacity for the date 26.01.2022, since the IPP Unit 2 was generating around 500 MW, whereas the IPP-unit day ahead capacity for 26.01.2022 was given as 50 MW round the clock. The petitioner is supplying 50 MW surplus capacities to GRIDCO after meeting its captive requirements. Still SLDC being a respondent to the case No.2 of 2022, proceeded to issue the above e-mail, being contrary to the directions issued by this Commission in the said order dated 25.01.2022 passed in Case No.2 of 2022. However, the petitioner vide its letter No.28.01.2022 apprised SLDC about the aforesaid order and requested to consider the revised energy accounting provided by the petitioner vide letter dated 03.01.2022. But the respondent SLDC chose not to respond to the said letter, thereby not confirming as to whether it accepted the energy accounting, which is in accordance with the Commission's orders dated 05.10.2021 and 25.01.2022. SLDC, being a state agency, is bound by the orders of the Commission and to perform its statutory functions and thereby revise the energy account/ schedule of the petitioner in line with the aforesaid orders. But in effect, SLDC is acting in derogation of the aforesaid orders of the Commission. Thus, the action/ inaction of SLDC is in the teeth of the provisions of the Electricity Act, 2003, specifically Section 33(1) of the said Act.
- e) In view of the above, the petitioner has prayed before this Commission to :
- Quash/ set aside the e-mail dated 25.01.2022 issued by the respondent SLDC.

- Direct SLDC to perform its statutory functions in terms of Section 33(1) of Electricity Act, 2003, thereby revising the energy accounting of the petitioner in terms of the orders dated 05.10.2021 and 25.01.2022 passed by the Commission in Case No.34 of 2018 and 2 of 2022 respectively, thereby treating Unit 2 of the petitioner's plant as CGP and consequently, direct SLDC to accept the revised energy accounting as intimated by the petitioner vide its letters dated 03.01.2022 and 28.01.2022.
- Quash/ set aside the e-mails dated 01.01.2022 and 03.01.2022 issued by TPWODL directing them not to take any coercive actions on account of any changes arising towards mis-match of the schedule.
- Quash/ set aside the letter dated 07.01.2022 issued by GRIDCO to the petitioner and consequently direct GRIDCO to accept the revised energy accounting furnished by the petitioner in accordance with the orders dated 05.10.2021 and 25.01.2022 passed by the Commission in Case No.34 of 2018 and 2 of 2022 respectively, thereby treating Unit 2 of the petitioners plant as a CGP.
- Direct the respondents not to take any coercive actions in future by functioning in accordance with the orders dated 05.10.2021 and 25.01.2022 passed by the Commission in Case No.34 of 2018 and 2 of 2022 respectively, thereby treating Unit 2 of the petitioners plant as a CGP.

3. The respondent SLDC has submitted that :

- a) M/s. Vedanta Ltd. had furnished the declared capacity of 50 MW from Unit 2 from 23.00 hours of 03.01.2022 and continued to furnish the same till 24.00 hours of 02.02.2022. Thereafter there was no declaration of capacity by the petitioner from 03.02.2022 to 19.02.2022.
- b) As the state was in power deficit situation, SLDC, vide its e-mail dated 25.01.2022, requested M/s. Vedanta Ltd. to furnish realistic declaration of capacity from Unit 2 to meet the state demand. On the same day, the Commission had issued their order dated 25.01.2022 in Case No.2 of 2022 making the notice/requisition dated 05.11.2021 of GRIDCO as ineffectual.

- c) Normally, SLDC is doing scheduling of the CGPs in the state for their captive wheeling and bilateral commercial transactions. The commercial settlement thereof is carried out by the buyer on the basis of the schedule and actual energy data as per their commercial agreement. Further, for the aforesaid period, the schedule transaction details of M/s. Vedanta Ltd. during the month of January and February, 2022 have already been uploaded in the SLDC website which can be used for commercial settlement.
- d) However, the Commission in its order dated 19.02.2022 in the interim application dated 14.02.2022 arising out of Case No.2 of 2022 have directed M/s. Vedanta Ltd. to supply full quantum of power with effect from the date of order i.e. 19.02.2022 forthwith as per the Commission's order dated 05.10.2021 in Case No.34 of 2018 till end of 31.03.2022 by procuring and utilizing linkage/concessional coal available for Unit 2 (600 MW) under the valid long term FSA pending disposal of Case No.6 of 2022. Thereafter M/s. Vedanta Ltd. declared forced outage of Unit 2 from 23.54 hours of 20.02.2022 and resumed furnishing declared capacity from 01.05 hours of 01.04.2022 which was scheduled by SLDC and same has been reflected in the energy account from the month of April, 2022.

4. The respondent TPWODL has submitted that :

- a) The petitioner M/s. Vedanta Ltd. started self consumption of power generated from Unit 2 from the 1<sup>st</sup> day of 4<sup>th</sup> quarter i.e. from 01.01.2022 whereas ineffectuality of GRIDCO's requisition for 4<sup>th</sup> quarter was decided by the Commission vide its order dated 25.01.2022. Further, the Commission, vide its order dated 19.02.2022, directed the petitioner to resume full power supply to GRIDCO till 31.03.2022, however, the petitioner company preferred to stop the generation from Unit 2 immediately. Now the petitioner has filed the present petition to ratify the mode of operation of Unit 2 as CGP for the entire duration of 4<sup>th</sup> quarter of FY 2022 and validate the energy accounting mechanism. Hence the present petition is not maintainable in the eyes of law.
- b) TPWODL has no role whether to accept or reject the schedule and energy accounting thereof, however, is answerable for any excess or under drawal in lieu of its approved day ahead schedule, based on which TPWODL's daily drawal is being approved by SLDC. Further, the issue of scheduling and energy accounting rest with SLDC. On 01.01.2022 it reveals that TPWODL's drawal

was more than the approved schedule due to occurrence of substantial drawal by Vedanta Ltd. Hence TPWODL communicated the same to M/s. Vedanta Ltd. through e-mail on 01.01.2022 and 03.01.2022. There was nothing in the mail which can cause dispute between the petitioner and TPWODL as per Section 86 (1) (f) and 86 (1) (k) of the Electricity Act, 2003. However, the query raised by TPWODL through those e-mails regarding mis-match between scheduled drawal and actual drawal is still unattended.

- c) Though as per Commission's order dated 25.01.22, GRIDCO's requisition dated 05.11.2021 was ineffectual, the Commission in its order dated 19.02.2022 with a direction to Vedanta Ltd. to resume power supply with immediate effect, has not specifically allowed operation of Unit 2 from 01.01.2022. to 19.02.2022 to be on CGP mode. Therefore, the views of M/s. Vedanta Ltd. that GRIDCO cannot requisition Unit 2 power is not yet conceived.
- d) The Commission vide its order dated 19.02.2022 has directed the petitioner to resume power supply forthwith from 19.02.2022. However, without honoring the said order of the Commission, the petitioner company deprived the state to made available cheaper power from its IPP Unit 2 in the power crisis scenario when GRIDCO was arranging power from marginal sources to fulfill the requirement of DISCOMs. But at the same time, the petitioner is compelling the Commission through the present petition to regularize the power which was being generated from Unit 2 for the period from 01.01.2022 to 19.02.2022. The generated power has not been fully supplied to GRIDCO rather consumed by the petitioner itself. In such scenario, the Commission may decide whether the petitioner is entitled to consume such power. If consumed, what should be the commercial arrangement of such power? Further, the excess power consumed by the petitioner beyond its contract demand (100 MVA) should be treated as state share of power and accordingly, TPWODL may be permitted to bill the said power as per RST rate.

5. The respondent GRIDCO has submitted that :

- a) In terms of the Commission's order dated 05.10.2021, GRIDCO had placed the requisition dated 05.11.2021 for availing power from Unit 2 of Vedanta Ltd. for the period from 01.01.2022 to 31.03.2022. Since Vedanta Ltd. did not declare the availability for supply of power from 01.01.2022, GRIDCO filed a petition before this Commission under Section 142 and under Section 146 of the

Electricity Act, 2003 in Case No.2 of 2022 with a prayer for directions to M/s. Vedanta Ltd. to forthwith submit day ahead declare capacity in favour of GRIDCO for meeting the state demand. However, the Commission, vide its letter dated 25.01.2022 passed in Case No.2 of 2022, held that the requisition dated 05.11.2021 of GRIDCO had become ineffectual. Subsequently, the Commission, vide its order dated 14.09.2022 in Case No.6 of 2022 filed by GRIDCO for review of the order dated 25.01.2022, declared the requisition of GRIDCO dated 05.11.2021 as effective and valid. Hence, in view of the Commission's order dated 14.09.2022, the present petition praying for direction to SLDC for accepting the revised energy accounting scheme of the petitioner, considering power supply from Unit 2 as captive power, has become infructuous since Unit 2 is to be treated as an IPP as per the order dated 05.10.2021.

- b) GRIDCO is in need of power from Unit 2 of the petitioner's plant throughout the year and shall be placing its requisition in time for availing the said power. Therefore, once the requisition is made by GRIDCO, the Unit 2 shall operate as an IPP as per Para 30 of the Commission's order dated 05.10.2021 in Case No.34 of 2018. Thus, at no point of time the power generated from Unit 2 of the petitioner's plant can be considered as captive power.
- c) In view of the aforesaid facts, according to GRIDCO, the present petition of M/s. Vedanta Ltd has become infructuous and is, therefore, liable to be dismissed as such.

6. The petitioner M/s. Vedanta Limited, in its reply to the submissions of the respondent-GRIDCO in its rejoinder, has submitted as follows:

- a) The reliance of GRIDCO upon the order dated 14.09.2022 passed by the Commission in Case No. 06 of 2022, wherein the Commission has declared the requisition of GRIDCO dated 05.11.2021 as effective and valid, is erroneous inasmuch as the said order has already been challenged by the petitioner before the Hon'ble APTEL, vide DFR No. 402 of 2022, which is pending for adjudication.
- b) The Commission, vide its order dated 05.10.2021, passed in Case No.34 of 2018, after analyzing the long term PPAs and corresponding power purchase cost of GRIDCO for past years as well as future years, had categorically held that the Unit 2 of the petitioner's plant would normally operate as CGP w.e.f. 01.01.2022. It is only based on the direction of the Commission in the said

order, the petitioner issued a letter dated 03.01.2022 to SLDC, thereby submitting the revised energy accounting scheme treating the Unit 2 as CGP, because as per the said order of the Commission, the petitioner can normally utilize power from Unit 2 for its own captive use, except for the time, when the power is supply to GRIDCO in terms of three months prior notice. Therefore, when the petitioner is not supplying power to GRIDCO, then irrespective of reason of non-supply of power, in terms of the order dated 05.10.2021, the Unit 2 of the petitioner is to be considered to operate as a CGP. Therefore, the power consumed by the petitioner from its Unit 2 for the period in question has to be treated as captive power and energy accounting has to be done accordingly. Further, from the findings of the Commission's order dated 25.01.2022 passed in Case No. 02 of 2022, it is clear that the petitioner was under no obligation to supply power to GRIDCO from its Unit 2 qua the quarter (January to March, 2022) and hence, the petitioner was free to operate its Unit 2 as a CGP.

- c) However, the Commission reopened the Case No. 02 of 2022 and passed order dated 19.02.2022, thereby directing the petitioner to forthwith supply power to GRIDCO. Since, the direction to supply power was passed only on 19.02.2022 and petitioner was consuming power for its captive purposes in terms of the Commission's order dated 25.01.2022, there was no requirement upon M/s. Vedanta Limited for any non-supply of power prior to 19.02.2022 i.e. from 01.01.2022 to 19.02.2022. The aforesaid order dated 19.02.2022 of this Commission was challenged by M/s. Vedanta Limited before the Hon'ble APTEL in Appeal No. 38 of 2022 and the Hon'ble APTEL vide its judgment dated 11.03.2022 dismissed the said appeal. Thereafter, the petitioner filed an appeal before the Hon'ble Supreme Court of India in Civil Appeal No. 2388 of 2022, challenging the aforesaid order of the Hon'ble APTEL, which is presently pending for adjudication. Accordingly, the M/s. Vedanta Limited was under no obligation to supply power to M/s. GRIDCO Limited until after passage of the aforesaid order dated 11.03.2022 passed by the Hon'ble APTEL, as there was no direction qua the same and the matter was subjudice. It is a settled principle of law that an act of a Court shall prejudice no one. Thus, the petitioner cannot be penalized for the period when it was acting in terms of the orders passed by this Commission. In this regard, the petitioner has referred the following judgments of the Hon'ble Supreme Court of India.



- Krishnaswamy S. Pd. And Ors. V. Union of India and Ors., reported in (2006) 3 SCC 286 (Paras 16 & 17); and
- Jayalakshmi Coelho V. Oswald Joseph Coelho, reported in (2001) 4 SCC 181 (Para 16).

7. Heard the Petitioner and the Respondents through virtual mode and arrived at the following observations and decisions:

- a) The Commission vide its order dated 05.10.2021 in Case No.34 of 2018, based on the application of the petitioner M/s. Vedanta Ltd., had allowed the IPP-Unit 2 of the petitioner's power plant to operate normally as a CGP unit with effect from 01.01.2022 and if in any quarter GRIDCO requires power from the petitioner for State consumption, they can avail the same giving three month's prior notice to the petitioner and during that period the Unit 2 will operate as an IPP unit. Further, for the 4<sup>th</sup> quarter of the FY 2021-22 i.e. for the period from 01.01.2022 to 31.03.2022, GRIDCO had to exercise its option to avail power from this unit within one month of the date of the order i.e 05.10.2021. GRIDCO had exercised its option on 05.11.2021 for availing power for the said quarter. But the petitioner did not accept the requisition of GRIDCO citing the reasons that as per the said order dated 05.10.2021, 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, which was not indicated in the option exercised by GRIDCO for availing such power. However, the petitioner had supplied 50 MW power from the Unit 2 from 03.01.2022 to 02.02.2022. But the argument of GRIDCO was that the stand of the petitioner was absurd and GRIDCO after due exercise of prudence had issued the requisition. However, the Commission, vide its order dated 25.01.2022 in Case No.2 of 2022, had rendered the requisition dated 05.11.2021 of GRIDCO ineffectual as the requisition made by the GRIDCO was time barred.
- b) According to SLDC, since the State was in a power deficit situation, the petitioner, vide e-mail dated 25.01.2022, was requested to furnish the realistic declaration of capacity from the Unit 2 of the petitioner's plant to meet the State demand.
- c) According to TPWODL, the drawal of TPWODL was more than the approved schedule due to substantial drawal by M/s. Vedanta Ltd., and it was

communicated to M/s. Vedanta Ltd. through e-mail dated 01.01.2022 and 03.01.2022 which is a normal practice and it should not be linked with the revised energy accounting scheme. Therefore, there is no dispute between the Petitioner and M/s. TPWODL and taking coercive action as apprehended by the Petitioner does not arise.

- d) The Commission, vide its order dated 25.01.2022, had rendered the requisition dated 05.11.2021 of GRIDCO as ineffectual. However, the Commission, vide its order dated 14.09.2022 in Case No.6 of 2022, reviewed the same order dated 25.01.2022 and affirmed the validity of the notice/ requisition issued by GRIDCO on 05.11.2021 to M/s. Vedanta Ltd. for supply of power from Unit 2 of the Petitioner's power plant.
- e) The petitioner M/s. Vedanta Ltd. has challenged the Commission's order dated 14.09.2022 passed in Case No.6 of 2022 before the Hon'ble APTEL, vide DFR No.402 of 2022, which is pending for adjudication. Further, the petitioner had also challenged the Commission's order dated 19.02.2022 before the Hon'ble APTEL in Appeal No.38 of 2022, but the Hon'ble APTEL, vide their judgement dated 11.03.2022, had dismissed the said appeal. The petitioner has approached the Hon'ble Supreme Court of India in Civil Appeal No.2388 of 2022 challenging the aforesaid order dated 11.03.2022 passed by the Hon'ble APTEL, which is under sub-judice.

- 8. At this juncture, while the matters are sub-judice before the Hon'ble Supreme Court of India and the Appellate Forum i.e. Hon'ble APTEL, this Commission does not feel it prudent to allow the prayer of the petitioner-Vedanta Limited. In other words, the Commission does observe that in the given scenario of the circumstances mentioned above, the prayers of the petitioner are untenable and the petition stands rejected.
- 9. Accordingly, the case is disposed of.

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

Sd/-  
**(G. Mohapatra)**  
Officiating Chairperson