

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

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

Case No. 20/2022

M/s.Raajratna Energy Holdings Private Ltd.	Petitioner
Vrs.		
GRIDCO Ltd.	Respondent

In the matter of: **Application under Sections 86 (1)(f)&86 (1)(e) read with Section 142 of the Electricity Act, 2003 against the wrongful deduction of rebate in the monthly energy bills of M/s. Raajratna Energy Holdings Private Ltd. for supply of power from its 1MW Solar PV project in contravention of order dated 29.10.2021 passed in Case No. 32 of 2021 and the provisions of the Power Purchase Agreement dated 21.08.2010 executed between them.**

For Petitioner: Shri Prasanjit Mishra, Advocate

Respondent: Ms. Saswati Mohapatra, Manager (RE), GRIDCO & Shri Prasant Kumar Das, CGM (PP), GRIDCO Ltd.

ORDER

Date of hearing: 20.09.2022

Date of Order: 18.10.2022

The petitioner-M/s.Raajratna Energy Holdings Private Ltd. (hereinafter referred to as M/s. REHPL) has filed the present application under Section 86 (1)(f)&86(1)(e) and 142 of the Electricity Act, 2003 against the wrongful deduction of rebate in the monthly energy bills of M/s. REHPL for supply of power from its 1MW Solar PV project in contravention of order dated 29.10.2021 passed by the Commission in Case No. 32 of 2021 and the provisions of the Power Purchase Agreement dated 21.08.2010 executed between M/s. REHPL and GRIDCO.

2. The petitioner has prayed the Commission to:
 - i. Issue notice under Section 142 of the Electricity Act, 2003 and initiate the action against the respondent.

- ii. Direct the respondent to refund the sum of Rs.64,99,010/- including applicable interest @1.25% per month towards the excess rebate wrongfully deducted upto FY 2021-22.
- iii. Direct the respondent to act in terms of Clause 5 (b) (ii) and Clause 5 (b) (iii) of the PPA dated 21.08.2010, as per the directives of this Commission in Case No. 32 of 2021.

3. The Petitioner has submitted that:

a) M/s. REHPL is operating a 1 MW Grid Interactive Solar PV Power Plant at Bolangir, Odisha which was established under the Rooftop PV and Small Solar Power Generation Programme (RPSSGP) Scheme under Jawaharlal Nehru National Solar Mission (JNNSM) of MNRE, Govt. of India. As per this programme of the Government of India, the local distribution utility in whose area the plant is located, would sign PPA with the project proponent at a tariff determined by the State Commission. The Commission vide its order dated 09.07.2010 in Case No. 58-105 of 2010 had determined the generic levelled tariff of Rs.18.52/kWh for 25 years. Accordingly, the Respondent-GRIDCO executed PPAs with 8 nos. of such Solar PV Developer (1 MW capacity each), including the petitioner herein, on 21.08.2010 for procurement of solar power at the above generic tariff determined by the Commission. The PPAs executed with all the 8 nos. of Solar PV Developers are standard/ identical.

b) Clause 5 (b) of the PPAs provides as follows:

“5 (b) Payment Procedure

- (i) A monthly invoice containing detailed statement reflecting the quantity of electricity supplied to the Grid at the designated Delivery Point and price payable shall be submitted by the Project Proponent to GRIDCO at its designated office.*
- (ii) A rebate of 2% on the billed amount shall be allowed for payment made by GRIDCO within 2 working days and 1% if the amount is paid within 30 days of the receipt of monthly bill of the Project Proponent.*
- (iii) For late payment beyond a period of 60 days from the date of billing, a Surcharge at the rate of 1.25% per month or part thereof shall be levied on the billed amount by the project proponent.*

x x x x x”

c) The 1 MW Solar PV Power Plant of the petitioner was commissioned on 11.07.2011. The Respondent-GRIDCO in contravention to the aforesaid Clause of the PPA has been availing the benefit of 2% rebate on the billed amount

irrespective of the number of days of delay in making payment against the bills raised by the petitioner. Another project developer M/s. S N Mohanty, inter alia, had challenged this issue before the Commission in Case No. 32/2021 and the Commission vide its order dated 29.10.2021 passed in this case had observed as follows:

“In view of the prayer and submission of Petitioner on rebate and DPS, the Commission observed that GRIDCO has been deducting rebate of 2% even after delaying the payment beyond two working days from the receipt of monthly bill. GRIDCO is directed to adhere to the Rebate and DPS conditions as per Clause 5 (b)(ii) and Clause 5 (b)(iii) of the PPA respectively as mentioned at Para 4 of this order. Accordingly, the excess rebate amount deducted by GRIDCO shall be refunded by GRIDCO to the Petitioner.”

- d) Since similar wrongful deductions were being made by the respondent from the payments made to the petitioner, the petitioner by a letter dated 29.11.2021 requested the respondent to act in terms of the PPA dated 21.08.2010 and the aforesaid order dated 29.10.2021 of the Commission passed in Case No. 32 of 2021 and to refund the excess amount of rebate deducted by the respondent. However, the respondent vide its letter dated 21.02.2022 contended that the said order dated 29.10.2021 is applicable to M/s. S N Mohanty and not to the petitioner and rejected the claim of the petitioner.
- e) The principle of the granting of rebate 2% within 2 working days can be traced to the BSP order while the ARR of GRIDCO is being determined by the Commission. Further, in terms of the OERC (Terms and Conditions of Determination of Generation Tariff) Regulations, 2020, the rebate of 2% is payable only in case payment is made within 2 working days.
- f) GRIDCO is deliberately contravening the provisions of PPA, the order dated 29.10.2021 and the directives contained in its tariff order and wrongfully deducting the rebate for payments made beyond the stipulated period in the agreement. This amounts a breach of the provisions of the PPA. The directions contained in the Commission's order dated 29.10.2021 are only applicable to M/s. S N Mohanty. It is contended on behalf of the petitioner that the respondent –GRIDCO adopted dilatory tactics to deny payment due to the petitioner under the standard/ identical PPA. In this regard the petitioner has relied upon the judgment dated 27.04.2021 of

the Hon'ble APTEL in Case of Maharashtra State Electricity Distribution Company Limited Vrs. Maharashtra Electricity Regulatory Commission & Others.

- g) The Commission is empowered under the provisions of Section 142 of the Electricity Act, 2003 to take cognizance of the wilful non-compliance of the directions of the Commission on the part of the respondent. In this regard the petitioner has relied upon the order dated 04.02.2022 of the Hon'ble APTEL in case of CLP Wind Firms (India) Pvt. Ltd. Vrs. Power Management Company Ltd. & another (Appeal No.184 of 2019).
- h) The Hon'ble Supreme Court of India while adjudicating the disputes pertaining to PPA, has recognised that the sanctity of a PPA entered between the parties by mutual consent cannot be allowed to be breached and terms of PPA are binding on both the parties equally. In this regard the petitioner has referred to the decision of the Hon'ble Supreme Court of India in the case of GUVNL Vrs. Solar Semiconductor Power Company Pvt. Ltd. (Civil Appeal No. 6399 of 2016). Further the sanctity of the contract has also been upheld by the Hon'ble APTEL in Appeal No. 163 of 2005 in the case of the Chairman, Tamil Nadu Electricity Board Vrs. Kothari Sugars & Chemicals Limited.
- i) The present petition has been filed under Sections 86 (1) (f), 86 (1) (e) read with Section 142 of the Electricity Act, 2003 and as such is well within the jurisdiction of this Commission. The Section 86 (1) (e) of the Electricity Act, 2003 casts an obligation upon the appropriate Commission to promote generation from renewable sources of energy. In the instant case the amount due and payable to a 1 MW Solar PV Power Project, under PPA, is being denied by the respondent in clear contravention of the principles already settled by this Commission in Case No. 32 of 2021, which cannot be permitted.

4. The Respondent-GRIDCO has submitted that:

- a) The Clause 5 (a) (i) of the PPA dated 21.08.2010 executed with the petitioner stipulates that *"x x x x x. GRIDCO will be billed by the project proponent based on joint meter reading promptly following the end of each month for the energy supplies and amount will be due on the 4th working days following the delivery of billing invoice."* As per Clause 5 (b) (ii) of the said PPA, *"A rebate of 2% on the billed amount shall be allowed for payment made by GRIDCO within 2 working*

days and 1% if the amount is paid within 30 days of the receipt of monthly bill of the project proponent.”

- b) The Clause 5 (a) deals with the Billing Procedure and Clause 5 (b) deals with the Payment Procedure and both are the part of the same Clause which cannot be contrary to each other. In order of performance, the Billing Procedure would be prior to the Payment Procedure. The Billing Procedure specifically provides that the amount would be due on the 4th working day following the delivery of billing invoice. GRIDCO has been consistently making the payment within six working days (4 days + 2 days) following the delivery of the monthly bill, since August, 2011 onwards. The petitioner has accepted the same without any protest or demur for more than 10 years and also signed the reconciliation statement and not even issued a billing dispute notice under Clause 15 of the PPA dated 21.08.2010. The similar practice was being followed on a regular basis by GRIDCO to other seven (7) solar developers under RPSSGP Scheme as per PPA conditions duly approved by the Commission in Case No.84 of 2011. The same issue has also been deliberated in Case Nos.44 & 45 of 2016 and the Commission at Para-14 of the order dated 05.02.2018 in the said cases have observed that, “x x x x x. *On rebate and DPS, GRIDCO has stated that the practices adopted are followed uniformly for all the 8 solar generators as per PPA. We find no ambiguity in these issues for rebate and delayed payment to the project proponent.”*
- c) The claim of the petitioner, vide its letter dated 29.11.2021, for refund of Rs.66,68,436/- (including DPS) towards excess rebate availed by GRIDCO, basing on the order dated 29.10.2021 passed in Case No. 32 of 2021, was not accepted by GRIDCO in view of the fact that the said order relates to M/s. S N Mohanty only. The present petition filed by the petitioner is purely an afterthought as the petitioner has never raised any dispute regarding the practice of payment during the last 11 years of plant operation and never approached GRIDCO for any mutual settlement of the dispute as per the terms and conditions of PPA dated 21.08.2010 before approaching the Commission for adjudication of the dispute, if any.
- d) However from the date of Order (29.10.2021), GRIDCO is releasing payment to all the solar developer under the scheme within two working days in order to avail 2% rebate prospectively, in compliance of the order dated 29.10.2021 in Case No. 32 of 2021.

- e) GRIDCO has filed an appeal before the Hon'ble APTEL in challenging the order dated 29.10.2021 passed in Case No. 32 of 2021 for refund of the deducted amount with retrospective effect and the matter is now pending before the Hon'ble APTEL for adjudication.
 - f) The rebate provision in the ARR and BSP order of GRIDCO is only for the DISCOMs to follow as per the BSP agreement between GRIDCO and the DISCOMs. This cannot be related to the PPA between the GRIDCO and the petitioner, being a generator.
 - g) Since, the order dated 29.10.2021 passed by the Commission in Case No. 32 of 2021 is only meant for M/s. S N Mohanty and no order has been passed by the Commission in respect of the petitioner, the present petition filed by the petitioner under Section 142 of the Electricity Act, 2003 is not maintainable and as such the petition being devoid of any merit is liable to be dismissed.
5. We have heard the parties and considered the submissions of the parties and the documents on record. We observe that:
- a) GRIDCO is availing 2% rebate from the monthly energy bills of the petitioner from the commissioning of the subject 1 MW solar PV power plant in the year 2011. The argument of GRIDCO is that as per Clause 5(a)(i) of the PPA (Billing Procedure), the billing amount would be due on the 4th working day following the delivery of billing invoice and as per Clause 5(b)(ii) of the PPA (Payment Procedure), a rebate of 2% on the billed amount shall be allowed for payment made by GRIDCO within 2 working days and 1% if the amount is paid within 30 days of the receipt of monthly bill of the Project Proponent. Accordingly, GRIDCO has been making payment within six working days (4 days + 2 days) following the delivery of the monthly bill and availing 2% rebate. The petitioner has accepted the same and never raised any protest/objection till November, 2021
 - b) The Commission vide its order dated 29.10.2021 in Case No.32 of 2021 has dealt this matter in case of M/s. S N Mohanty Vrs. GRIDCO and observed that "*Xxxxxx GRIDCO has been deducting rebate of 2% even after delaying the payment beyond two working days from the receipt of monthly bill. GRIDCO is directed to adhere to the Rebate and DPS conditions as per Clause 5 (b)(ii) and Clause 5 (b)(iii) of the PPA respectively xxxxx. Accordingly, the excess rebate amount deducted by GRIDCO shall be refunded by GRIDCO to the Petitioner.*"

- c) Only after issue of the above order dated 29.10.2021, the petitioner M/s. REHPL vide its letter dated 29.11.2021 for the first time claimed GRIDCO for refund of excess rebate deducted by GRIDCO from its monthly bills amounting to Rs.64, 99, 010/- (including DPS @1.25% per month) from the commissioning of its Solar Power Plant upto FY 2021-22 and on non-acceptance of the same by GRIDCO, the petitioner filed the application before this Commission on 16.04.2022.
 - d) After issue of the aforesaid order 29.10.2021, in order to avail 2% rebate GRIDCO is releasing payment within two working days of the receipt of monthly energy bill of the petitioner. However, regarding refund of excess rebate amount availed by GRIDCO for the past period, GRIDCO has filed an appeal before the Hon'ble APTEL challenging the Commission's order dated 29.10.2021 passed in Case No.32/2021, which is now pending before the Hon'ble APTEL for adjudication.
6. We further observe that the Electricity Act, 2003 (hereinafter referred to as the Act) is a special statute, which does not provide for any period of limitation for adjudication of the case by this Commission. Though the period of limitation has been prescribed in the Act for filing of petitions for adjudication of the dispute, the Hon'ble Supreme Court in the case of AP Power Coordination Committee and Other Vrs. M/s. Lanco Kondapalli Power Ltd and Others (2016) 3 SCC 468 (the Lanco case) held that the claim coming for adjudication before the Commission cannot be entertained or allowed, if otherwise, the same is not recoverable in a regular suit on account of law of limitation. The relevant extract of the said judgement is as under:

“30.....In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Sections 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86 (1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any

other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.”

In the light of the above judgement, the limitation period prescribed for money claims under the Limitation Act, 1963, i.e. three years, will be applicable for filing the application before the Commission.

7. In view of the above observations, we find that the actions of the Respondent-GRIDCO do not attract penalty under Section 142 of the Electricity Act, 2003 for non-compliance of the Commission's order dated 29.10.2021 in Case No. 32 of 2021 (M/s. S N Mohanty Vrs. GRIDCO). However, on the issue of refund of excess amount by the Respondent-GRIDCO towards deduction of rebate, we observe that the petitioner has never raised any objection/ invoice with GRIDCO since the commissioning of its solar PV plant on 11.07.2011. Now the petitioner has raised these issues after a period of about 10 years. As per the Limitation Act, 1963 and in view of the authoritative pronouncement of the Hon'ble Apex Court in case of AP Power Coordination Committee and Other Vrs. M/s. Lanco Kondapalli Power Ltd, the claim of the petitioner shall be restricted for a time period of three years from the date of filing of the claim application downward along with simple interest @6% per annum and the claim related to the earlier period stands time barred. Hence, we direct GRIDCO to make refund of the amount deducted towards excess rebate to the petitioner for the permissible period of three years within a period of two months from the date of this Order failing which the petitioner shall be at liberty to realize the amount under due recourse of law. No DPS shall be claimed by the petitioner, if the refund is made by the Respondent within the period of two months from the date of issue of this Order.
8. Accordingly, the case is disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson