

**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. 28/2022

M/s. S.N. Mohanty, a partnership firm	Petitioner
Vrs.		
GRIDCO	Respondent

In the matter of: Application under Section 142 of the Electricity Act, 2003 for non-compliance of order dated 29.10.2021 of the Commission passed in Case No.32 of 2021.

For Petitioner: Shri Prabodh Mohanty along with Shri R.P. Mahapatra, the authorized representative.

Respondent: Ms. Saswati Mohapatra, Manager (RE), & 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. S.N. Mohanty has filed the present application under Section 142 of the Electricity Act, 2003 for non-compliance of order dated 29.10.2021 of the Commission passed in Case No.32 of 2021 by the Respondent-GRIDCO. The petitioner has prayed the Commission to:

- i. Impose the maximum penalty of One Lakh Rupees on GRIDCO Ltd. as they are habitual defaulters in not complying the order of the Commission and an additional penalty of Six Thousand Rupees for everyday for continuing failure under Section 142 of the Electricity Act, 2003.
 - ii. Direct GRIDCO to refund the petitioner along with interest on all the amount illegally deducted for lesser generation as well as availing excess rebate even after due date.
2. The Petitioner has submitted that:
- a) M/s. S.N. Mohanty has entered into a PPA with GRIDCO on 28.08.2010 for supplying Solar Power from its 1 MW Grid Interactive Solar PV Power

Generation Plant at Village Patapur, Baranga in Cuttack District which was established under the RPSSGP Scheme under Jawaharlal Nehru National Solar Mission (JNNSM) of MNRE, Govt. of India. As per the Commission's order dated 09.07.2010 passed in Case Nos. 58-105 of 2010, the generic levelled tariff is Rs.18.52/kWh for 25 years. The said 1 MW Solar PV Plant was commissioned on 23.08.2011 and is operating successfully thereafter.

b) The petitioner had filed a petition in Case No. 32 of 2021 against the Respondent-GRIDCO and TPCODL being aggrieved with the following reasons:

- For billing based on Joint Meter Reading (JMR) instead of Energy Billing Center (EBC) statement.
- Unilateral deduction of rebate @2% by GRIDCO even after due date.
- Opening of Letter of Credit (LC).
- Penalty for short fall of generation.

c) The Commission vide its order dated 29.10.2021 in Case No.32 of 2021 at Para-17 & 18 has observed the following on the issue of billing based on JMR instead of EBC statement.

"17. In this connection we are referring our order in Case No. 28 & 29/2018 dated 09.04.2019 which are similar in nature to the present case where we have directed as follows:

"15. in the present cases, on the issue of billing on joint meter reading, the respondent GRIDCO has submitted that they will accept the monthly energy bills based on joint meter readings, if such bills are raised by the petitioners with supporting documents. On the other hand, the petitioners have submitted that no arrangements was made for recording the joint meter readings, hence they are unable to raise bills based on the same. In view of the above, GRIDCO is directed to make necessary arrangements in consultation with OPTCL/DISCOMs and project proponent to take joint meter reading on the 1st day of the succeeding month and billing should be made by the petitioner in line with the provisions of the PPA."

18. Therefore, GRIDCO in the present case shall also make necessary arrangement in consultation with OPTCL/DISCOMs and project proponent to take joint meter reading on the 1st day of the succeeding month and billing should be made by the Petitioner in line with provisions of PPA."

- d) However, the Commission in its order dated 20.12.2021 in Case No. 58 of 2021 at Para-24 has observed as under:

“24. Now, in the present petition GRIDCO has submitted that they have made discussions with SLDC, EBC and concerned DISCOMs and it was opined that it would be difficult to account the energy for 8 nos. of solar generators considering the JMR data (Manual Data) as those cannot be processed through the billing software. Further, as per the MoU with IREDA on dated 15.04.2011, on disbursement of GBI under RPSSGP Scheme, billing for the 8 nos. of SPV projects is being done on initial-final reading reflected in the EBC Energy Export Statement of the State Energy Accounting (SEA). GRIDCO submitted that now all the solar developers under RPSSGP Scheme except M/s. Shri Mahavir Ferro Alloys Pvt. Ltd. and M/s. Vivacity Renewable Energy Pvt. Ltd. have agreed and given their consent for billing on the basis of EBC Energy Export Statements as per initial and final readings. From the present submissions of the respondent SPDs, the Commission observed that most of the SPDs have no objection for taking the meter readings on the basis of EBC Energy Export Statements as per initial and final readings towards preparation of their monthly energy bills. There is innovation in meter reading procedures in the meantime. In view of the above the Commission is of the opinion that GRIDCO may discuss with all the 8 nos. of SPDs in presence of the representatives of SLDC, EBC and concerned DISCOMS and explain the SPDs the advantage of EBC meter reading for the purpose of billing in place of JMR and accordingly amendments may be made in the PPA. The above amendments may be incorporated in the agreement and submitted to the Commission for appraisal.”

In view of the above, the petitioner agrees for billing on the basis EBC Energy Export Statements as per initial as final reading.

- e) The Commission vide its order dated 29.10.2021 in Case No.32 of 2021 at Para-19 has observed the following on the issue of unilateral deduction of rebate @2% and @1% even after the due date.

“19. 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.”

As per the above order of the Commission, the petitioner has raised an invoice vide its letter dated 09.11.2021 amounting to Rs.24,70, 828/- to GRIDCO for the

excess rebate it has availed while making payment of monthly energy bill as on 06.08.2021.

- f) The Commission vide its order dated 29.10.2021 in Case No. 32 of 2021 at Para-20 has observed the following on the issue of opening of LC as per PPA.

“20. In the connection of opening of LC we refer to Clause 5 (b) (v) & (vi) of PPA between GRIDCO and the Petitioner. We also reiterate our order in similar Case No. 44 & 45/2016 dated 05.02.2018 where we have directed as follows:

“14. xxxxxxxx We observe that the PPA executed between parties herein have provision of LC in section 5(b) and the manner of operation of the same as well as subsequent paragraphs. Agreed provisions have to be honoured by the respondent. We find no reason to allow deviation to this. Therefore the respondent shall complete all formalities on LC in line with PPA within one month. xxxxxxxx”

Therefore, all the formalities regarding opening of LC in favour of the Petitioner must be completed by GRIDCO within a month from issuance of this order. If LC has been opened in the meantime it must be renewed before its expiry.”

GRIDCO has not yet taken any action for opening of LC as per the above order of the Commission though the petitioner has approached GRIDCO so many times in this matter.

- g) The Commission vide its order dated 29.10.2021 in Case No.32 of 2021 at Para-21 has observed the following on the issue of unilateral deduction 61 Paisa/kWh for lesser generation.

“21. Regarding unilateral deduction of Rs.0.61/kWh for lesser generation we refer to our order in Case No. 44 & 45/2016 where we have directed as follows:

“14. Xxxxxxxx

Regarding deduction of Rs.0.61/ kWh, for not maintaining 1 lakh units per month generation standard, GRIDCO stated that the same has been agreed in a meeting between the parties subsequent to the signing of PPA. The Petitioner stated that in that meeting it was decided that average annual generation would be 12 lakh units and not one lakh unit per month. The Commission observes that this modification is outside PPA and has not been approved (by Commission) yet. Therefore, in case it has been agreed by parties, the same is to be included in PPA with appropriate amendment/ inclusion and placed before Commission for approval.

In addition to this the Commission in Case No. 53 & 54/2020 had issued stricture to GRIDCO for non-compliance of the above order of the Commission which is quoted below:

“60. Lastly, the GRIDCO’s unilateral action of deducting penalty for lesser generation without incorporating relevant provisions in the PPA with our approval is a gross violation of our order. The Commission has categorically in Para 14 of their order directed that “in absence of legally bound agreement unilateral deduction for lesser generation is not permissible. However, once the PPA is approved GRIDCO shall act upon the same. We direct parties to file the PPA before the Commission within three months for approval”. Our order had been issued on 09.04.2019 which was more than two years ago. But GRIDCO has failed to take any action for approval of the revised PPA but rather has started unilateral deduction of penalty. This tantamounts to defiance of our order.”

In view of the above order of the Commission it is observed that unilateral deduction by GRIDCO for lesser generation is gross violation of PPA It is illegal and must be stopped immediately. As directed earlier, if the parties agree for a modification in the PPA, GRIDCO may come up with the modified PPA for approval of the Commission. Till such time the existing PPA must be honoured.”

As per the above order of the Commission, the petitioner has raised an invoice vide its letter dated 09.11.2021 for refund of amount recovered unilaterally by GRIDCO in different years amounting to Rs.67, 30, 512/- upto 2021.

- h) Further, the petitioner vide its letter dated 09.11.2021 has raised an invoice amounting to Rs.67, 18, 966/- on GRIDCO for Delayed Payment Surcharge (DPS) on the excess rebate availed as on 06.08.2021 and the amount recovered due to less generation. However, no action is taken by GRIDCO for refund the amount along with DPS even after several reminders and personal meetings.
- i) Since, GRIDCO has not carried out the aforesaid directions of the Commission passed in order dated 29.10.2021 in Case No.32 of 2021 even after the submission of the invoice and reminders, the petitioner has filed the present petition under Section 142 of the Electricity Act, 2003 with a prayer to direct GRIDCO to implement the said order and further to impose penalty on GRIDCO for contravention of the directions of the Commission.

3. The Respondent-GRIDCO has submitted that:

- a. The Commission vide its order dated 29.10.2021 in Case No.32 of 2021 has directed GRIDCO to make necessary arrangement in consultation with

OPTCL/DISCOMs and the project proponent to take Joint Meter Reading (JMR) for billing in line with the provisions of PPA. Prior to the above directions of the Commission, GRIDCO has already requested the concerned DISCOM-TPCODL to make arrangement for JMR in favour of the petitioner as the petitioner's solar plant is situated in the license area of TPCODL. However, in Case No. 58 of 2021, based on the submission of GRIDCO regarding difficulties for taking JMR of all the 8 nos. of 1 MW solar plants, the Commission vide its order dated 20.12.2021 had opined that GRIDCO may discuss with all the Solar Power Developers (SPD) in presence of SLDC, EBC and concerned DISCOMs regarding EBC meter reading for billing purpose instead of JMR and accordingly to amend the PPA. Accordingly, GRIDCO discussed with all concerned parties and it was agreed by the SPDs for conducting the billing procedure on EBC energy export statement as per initial and final reading. The amendment of existing PPAs with the SPDs for incorporation of the same is in progress.

- b. As per the direction of the Commission vide order dated 29.10.2021 in Case No. 32 of 2021 regarding deduction of rebate @2%, GRIDCO is now releasing payment of monthly energy bill of the petitioner within two working days of the receipt of the bills by it prospectively from the date of the order to avail 2% rebate and to avail 1% rebate payment is being released within 30 days from the date of receipt of the bill as per Clause 5 (b) of the PPA.
- c. Regarding refund of excess rebate amount deducted by GRIDCO from the date of commissioning of the Solar Plant, GRIDCO has filed an appeal before the Hon'ble APTEL in assailing the order dated 29.10.2021 passed by the Commission in Case No. 32 of 2021 vide DFR No. 142 of 2022 which is pending for adjudication. As the matter is sub-judice before the Hon'ble APTEL on the ground that GRIDCO has adopted the same payment method as per the approved PPA for all the 1 MW Solar PV Projects under RPSSGP Scheme, the claim made by the petitioner for refund of excess amounts towards rebate along with DPS, is not acceptable to GRIDCO.
- d. In compliance with the order dated 29.10.2021 in Case No. 32 of 2021 regarding opening of LC, GRIDCO has already opened the LC account in favour of the petitioner-M/s. S N Mohanty bearing Serial No.78820ILCR001221 for an

amount of Rs.15.55 Lakhs for the FY 2021-22 within the stipulated time as directed by the Commission. The same has been implemented to the petitioner vide letter dated 31.12.2021 of the Authorized Bank. But the petitioner is misleading the Commission by submitting the wrong information.

- e. In compliance with the order dated 29.10.2021 in Case No. 32 of 2021 regarding unilateral deduction of 61 Paisa/kWh towards lesser generation than 12 Lakh units in any financial year, deduction of any penalty has been stopped by GRIDCO prospectively from the date of order in respect of the 1 MW Solar PV Projects under the RPSSGP Scheme including the petitioners plant. Since, there was no other direction in this matter in the impugned order of the Commission. The question of non-compliance of the order does not arise.
- f. In view of the above, GRIDCO has complied with the impugned order of the Commission in all respect except refund of the excess amount, which is being assailed before the Hon'ble APTEL and the same shall be complied with subject to the judgment of the Hon'ble APTEL in DFR No. 142 of 2022. Hence, there is no merit in the present complaint petition filed by the petitioner-M/s. S N Mohanty under Section 142 of the Electricity Act, 2003 and the same may be dismissed being devoid of merit.

4. The petitioner-M/s. S N Mohanty in its rejoinder has submitted that:

- a. Prior to issue of the order dated 29.10.2021 by the Commission, GRIDCO had requested TPCODL to make necessary arrangements for recording JMR and no follow up action has been made by the respondent-GRIDCO. Further, when the petitioner agreed to the procedure billing on EBC Energy Export Statements, no action has been taken by the respondent-GRIDCO for amendment of the PPAs and submission of the same before the Commission for approval, even though more than nine months have been elapsed from the order dated 20.12.2021 passed in Case No. 58 of 2021. Such action of the respondent is a case of non-compliance of the orders of the Commission.
- b. Based on the order dated 29.10.2021 of the Commission in Case No. 32 of 2021, the petitioner raised the invoice amounting to Rs.24, 70, 828/- as on 06.08.2021 to GRIDCO vide letter dated 09.11.2021 towards excess rebate availed by GRIDCO whiling making payment of energy bills. But no payment has been

released from GRIDCO so far. The Hon'ble APTEL has not passed any stay order on the appeal of GRIDCO (DFR No. 142/2022) against the Commission's order dated 29.10.2021 in Case No. 32 of 2021. However, the Hon'ble APTEL in its order dated 05.08.2022 in I.A No.1215/2022 (for early hearing) have observed as follows:

"If the Commission passes any adverse order on the proceedings which have been taken out under section 142 of Electricity Act, the party thereby affected we have the necessary remedies to pursue. Application for early hearing is disposed of with these observations."

- c. In view of the above, the action of GRIDCO for not refunding the excess rebate availed is a contravention of the direction of the Commission vide its order in Case No. 32 of 2021. Hence, the Commission may direct GRIDCO to refund the amount claimed on this account immediately. In case any adverse order is issued by the Hon'ble APTEL, GRIDCO may deduct the amount in suitable instalments from the subsequent invoices of the petitioner.
- d. GRIDCO has not submitted copy of the LC to the petitioner nor has intimated about the terms and conditions of the LC opened in favour of petitioner for the FY 2021-22. Further, during the hearing on 20.09.2022, GRIDCO has informed that they have renewed the LC for the FY 2022-23. However, the petitioner has not received any intimation from GRIDCO or its Banker about renewal of the LC for FY 2022-23 nor the terms and conditions for operation of LC was intimated which is gross violation of direction of the Commission.
- e. As per Para-21 of the Commission's order dated 29.10.2021 in Case No. 32 of 2021 unilateral deduction by GRIDCO for lesser generation of the 1 MW Solar PV Projects is gross violation of the PPA. It is illegal and must be stopped immediately. If the parties agreed for a modification in the PPA in this regard, GRIDCO may come up with the modified PPA for approval of the Commission. Till such time the existing PPA must be honoured. The petitioner does not agree to any deduction for lesser generation. Further, in view of the disagreement of the petitioner as well as other Solar PV generators, the PPA has not been amended. Accordingly, all the deduction made by GRIDCO from the invoices of the petitioner starting from 03.10.2012 is illegal and the amount deducted has to be refunded by GRIDCO. The petitioner has claimed an amount of Rs.67,30,512/- on this account upto FY 2020-21.

- f. If the generation of power from the 1 MW Solar PV projects of the petitioner is very much less than the assumed generation of 1.621 MU, the tariff has to be increased to compensate the solar generator to meet its cost. It has no where being submitted by the respondent that the deduction of the generation is on account of any failure of the petitioner. Therefore, levy of any penalty is totally unjustified and illegal. The Commission may, for the sake of clarity, pass orders that the amount deducted for lesser generation @61 Paisa/kWh be refunded to the Solar Power Developers from the beginning of deduction.
- g. The respondent-GRIDCO has not refunded the amount deducted from the beginning nor submitted any revised PPA with the provision for deduction due to lesser generation, for approval of the Commission. This amounts to violation of order dated 29.10.2021 of the Commission passed in Case No.32 of 2021.
5. Heard the parties through virtual mode and their written submissions are considered. We observe that the petitioner has filed the present petition under Section 142 of the Electricity Act, 2003 for non-compliance of the order dated 29.10.2021 of the Commission passed in Case No. 32 of 2021 by the Respondent-GRIDCO on the following matters:
- Billing based on Joint Meter Reading (JMR) instead of EBC statement
 - Unilateral deduction of rebate @2% by GRIDCO even after due date
 - Opening of Letter of Credit (LC)
 - Penalty for shortfall of generation
- Now we discuss the matters individually as under:

Billing based on Joint Meter Reading (JMR) instead of EBC (Energy Billing Center) Statement.

6. We observe that the Commission vide its order dated 29.10.2021 passed in Case No. 32 of 2021 had directed the Respondent-GRIDCO to make necessary arrangements in consultation with OPTCL/DISCOMs and project proponent to take JMR for billing purpose in line with the provisions of PPA. However, later the Commission, vide its order dated 20.12.2021 in Case No. 58 of 2021, had observed that GRIDCO may discuss with all the 8 nos. of SPDs in presence of the representatives of SLDC, EBC and concerned DISCOMs and explain the SPDs about the advantages of EBC meter reading for the proposed billing in place of JMR and accordingly amendments may be made in the PPA and submitted to the Commission for approval. Accordingly,

GRIDCO had convened a meeting and the petitioner had agreed for billing on the basis of EBC energy export statements as per initial and final readings. As per the submissions of GRIDCO, amendment of the existing PPA in this regard is under progress.

In view of the above, we direct both GRIDCO and the Petitioner to make necessary amendments in the existing PPA for billing on the basis of EBC Energy Export Statement at the earliest and submit the same to the Commission for approval.

Unilateral deduction of rebate @2% by GRIDCO even after due date

7. We observe that the Commission in its impugned order dated 29.10.2021 had also directed GRIDCO to adhere to the Rebate and DPS conditions as per Clause 5 (b) (ii) and Clause 5 (b) (iii) of the PPA respectively. Accordingly, the excess rebate amount deducted by GRIDCO shall be refunded by GRIDCO to the petitioner. The petitioner has raised an invoice amounting to Rs.24,70,828/- before GRIDCO for refund of excess rebate availed by GRIDCO while making payment of monthly bills as on 06.08.2021. As per the submissions of GRIDCO, the payment of monthly energy bills of the petitioner are being released within two working days of receipt of the bills prospectively from the date of the impugned order in order to avail 2% rebate. However, GRIDCO has not accepted the bills of the petitioner towards refund of excess rebate deducted by it from the date of the Commissioning of the solar plant.

Admittedly the order dated 29.10.2021 passed by this Commission in Case No. 32/2021 regarding refund of excess rebate amount deducted by GRIDCO has been challenged by the Respondent-GRIDCO by filing an appeal registered as DFR No. 141/2022 before the Hon'ble APTEL. The Petitioner has entered his appearance in the said matter which is posted to 01.11.2022 awaiting submission of reply by the Petitioner followed by rejoinder of the Respondent GRIDCO. It is, however, the contention of the petitioner M/s. S N Mohanty that since there is no order of stay by the Hon'ble APTEL, there is no legal impediment for this Commission to allow implementation of order dated 29.10.2021.

On the other hand, the Representative of the Respondent-GRIDCO submits that since appeal has already been preferred by the GRIDCO against the order dated 29.10.2021 passed in case No. 32/2021 before the Hon'ble APTEL, no further order should be passed by this Commission in the matter, muchless, for implementation of the

impugned order. In course of hearing, the Representative of GRIDCO also invited a reference to the interim order passed by the Hon'ble APTEL dated 06.08.2022 in I.A. No.1215 of 2022 arising out of DFR No. 142 of 2022. Said order dated 06.08.2022 is extracted herebelow:

“If the Commission passes any adverse order on the proceedings which have been taken out under Section 142 of Electricity Act, the party thereby affected will have the necessary remedies to pursue. Application for early hearing is disposed of with these observations.”

It is thus contended by the Representative of GRIDCO that GRIDCO is diligently pursuing the matter so as to bring an end to the litigation.

The question involved in the present case is a matter of payment/refund of money. No case is made out by the petitioner to show that if the impugned order is not implemented at this stage, the petitioner will suffer any irreparable injury. Keeping the same in view and the appeal preferred by the Respondent-GRIDCO having already been entertained by the Hon'ble APTEL in DFR No.142/2022 and with a view to avoid multiplicity of litigations, this Commission does not feel it expedient to allow implementation/execution of the impugned order i.e. order dated 29.10.2021 passed in Case No.32 of 2021 before final disposal of the appeal by the Hon'ble APTEL.

Opening of Letter of Credit (LC)

8. We observe that the Respondent-GRIDCO, in compliance with the impugned order dated 29.10.2021, has already opened LC in favour of the petitioner for the FY 2021-22 and during the hearing GRIDCO has informed that they have renewed the LC for the FY 2022-23. The petitioner submits that GRIDCO has not intimated them about the terms and conditions of the LC opened for the FY 2021-22 and not informed about renewal of the LC for the FY 2022-23.

We direct the Respondent-GRIDCO to intimate the petitioner about renewal and the terms and conditions of the LC opened in favour of the petitioner.

Penalty for shortfall of generation

9. We find that in the impugned order dated 29.10.2021, the Commission had observed that, *“In view of the above order of the Commission it is observed that unilateral deduction by GRIDCO for lesser generation is gross violation of PPA. It is illegal and must be stopped immediately. As directed earlier, if the parties agree for a modification in the PPA, GRIDCO may come up with the modified PPA for approval of the*

Commission. Till such time the existing PPA must be honoured.” In view of the above observations, the petitioner was not agreeable for modification of the PPA in this matter. It is seen that the Petitioner has raised an invoice on GRIDCO amounting to Rs.67,30,512/- upto the year 2021 towards refund of the amount unilaterally deducted by GRIDCO for lesser generation at the petitioner’s solar PV plant. But GRIDCO submits that in compliance with the impugned order of the Commission, they have stopped any penalty on the petitioner towards lesser generation prospectively from the date of order.

We find that since the petitioner is not agreeable for modification of the PPA in respect of the above matter, GRIDCO cannot modify the PPA unilaterally. Further, in the impugned order dated 29.10.2021, GRIDCO was directed to stop any deduction for lesser generation from the Petitioner’s Solar Plant immediately as it is contrary to the existing PPA. Consequently GRIDCO has stopped such deduction from the energy bills of the petitioner prospectively from the date of the impugned order. Hence, the action of GRIDCO does not attract the penal provisions under Section 142 of the Electricity Act, 2003 under which the petitioner has filed the present application.

10. In view of the above discussions, we find that the actions of the Respondent-GRIDCO do not attract any penalty under Section 142 of the Electricity Act, 2003 for non-compliance of the Commission’s order dated 29.10.2021 passed in Case No. 32 of 2021 in respect of all the above issues raised by the petitioner.
11. With the above observations and directions, the case is disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson