

**ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO. 4, CHUNUKOLI, SAILESHREE VIHAR,
CHANDRASEKHARPUR,
BHUBANESWAR-751021**

**Present: Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member**

Case No. 109/2023

OPTCL	Petitioner
Vrs.		
TPSODL & Others	Respondents

In the matter of: Application under Section 86(1)(f) read with Section 142 and Section 20 of the Electricity Act, 2003 seeking appropriate direction of the Commission to TPSODL from restraining in unauthorized use of land of OPTCL.

For Petitioner: Shri Pranoy Mohanty, Advocate, Ms. Niharika Pattnaik, AGM (Law), & Ms. Madhumita Swain, DGM(Legal), OPTCL

For Respondents: Shri Prasanta Kumar Tripathy, Advocate along with Sri Ashish Kumar Panda, Dy. Manager (Legal), TPSODL, Ms. Sonali Pattnaik, Manager (Legal), DoE, GoO and Shri B. C. Padhiary, CGM (F), GRIDCO Ltd.

ORDER

Date of Hearing: 28.11.2023

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The Petitioner-Odisha Power Transmission Company Ltd. (OPTCL), Bhubaneswar has filed the present petition under Section 86(1)(f) read with Section 142 & Section 20 of the Electricity Act, 2003 seeking appropriate direction of the Commission to TPSODL from restraining in unauthorized use of land of OPTCL. The Petitioner has prayed the Commission to invoke its jurisdiction and pass direction to the TPSODL, thereby restraining it from undertaking any construction and/or any other activity over the land of OPTCL and/or refer the matter to the State Government, Energy Department to act as Arbitrator for resolving the dispute.

2. The Petitioner-OPTCL has submitted that:

- a) The State Government in exercise of its power conferred under the Orissa Electricity Reform Act 1995 (OER Act, 1995) and the Orissa Electricity Reform (Transfer of Undertakings, Assets, liabilities, Proceedings and Personnel) Scheme/Rules, 1996, acquired all the undertakings of the erstwhile OSEB and transferred the undertakings concerning transmission, distribution or supply of electricity to Grid Corporation of Orissa Ltd. (GRIDCO). Subsequently, by virtue of the Orissa Electricity Reform (Transfer of Undertakings, Assets, Liabilities,

Proceedings and Personnel of GRIDCO to Distribution Companies) Rules, 1998, all the distribution undertakings of four different zones along with all such assets, liabilities, proceedings and personnel of respective zones were transferred to and vested with four different and independent Distribution Companies w.e.f. 26.11.1998. Accordingly, the distribution undertaking concerning the 33 kV, 11 kV and LT lines of Southern Electricity Distribution Zone along with all the assets, liabilities, proceedings and personnel were transferred to and vested with the then SOUTHCO. But all other land/portion of land including residential colonies having the occupation of both transmission and distribution staff continued to be remained with GRIDCO as it holds 49% stake in four DISCOMs of Odisha.

- b) GRIDCO vide its Office order dated 23.12.2003 has categorically clarified that certain arrangements were made with the intention to facilitate and streamline the allotment and proper maintenance of the quarters in the interest of the employees of GRIDCO and employees of Distribution Companies and shall not be construed as transfer of ownership of the residential quarters to the distribution companies and the ownership of the residential quarters will continue with GRIDCO. Accordingly, the residential colonies in different zones are placed under administrative control of distribution companies only for the sake of smooth allotment and maintenance.
- c) Thereafter, under the Orissa Electricity Reforms (Transfer of Transmission and Related Activities) Scheme, 2005, OPTCL came into existence w.e.f. 01.04.2005 and all the transmission assets including lands & building, residential quarters which are in possession of GRIDCO are transferred to OPTCL. Further, the Commission vide its order dated 28.12.2020 in Suo Motu Proceeding Case No.83 of 2020 (Vesting Order) while vesting the SOUTHCO Utility in TPSODL has mentioned at para 60 about Right to use the lands instead of transfer. Accordingly, the land under distribution areas are not transferred to TPSODL, therefore, the question of right over the land of OPTCL does not arise.
- d) The land/portion of land except where the 33kV, 11kV Sub-station, distribution stores and distribution offices are situated belongs to OPTCL and the ownership of the residential colonies lies with OPTCL. Despite knowing the above facts, TPSODL is trying to start construction over the vacant land at Bidyutpuri Colony (Kalapuri), Berhampur. Further, even after issue of notice in writing by OPTCL, the Respondent-TPSODL is not restraining from such illegal act and thereby, violating the norms of the Transfer Scheme as well as the Vesting order of the OERC.

- e) In this context, the Petitioner-OPTCL seeks direction to TPSODL to restrain from such illegal act of indulging in trespassing over the land of OPTCL and undertaking unlawful construction over the vacant land in the area of other licensee and may be penalized as per the appropriate provision of the Electricity Act, 2003. The Commission is requested to take the views of the State Government in resolving the dispute between TPSODL and OPTCL as the Arbitrator.
3. The Respondent-TPSODL has submitted that:
- a) The instant petition filed by OPTCL under Section 86 (1) (f) and Section 142 of the Electricity Act, 2003 is not maintainable in the eyes of Law as the Commission has ample power under Section 86 (1) (f) of the Act to adjudicate the disputes only between the licensees and the generating company. Therefore, the petition filed by OPTCL against the distribution licensee, TPSODL is not maintainable, thus liable to be rejected as it is *void ab initio*. Section 86 of the Electricity Act, 2003 provides the functions of the State Commission and the Section 142 of the Electricity Act, 2003 provides the power of Regulatory Commission to punish for non-compliance of directions issued by the Appropriate Commission.
- b) As per the Transfer Scheme, 1998, the distribution function was transferred to four DISCOMs along with distribution assets including residential quarters in the year 1998. As per Rule 2(d) and Schedule-D, Part-1 of the said Transfer Scheme, 1998, M/s. GRIDCO transferred entire distribution function to the respective DISCOMs along with assets pertaining to distribution functions.
- c) Much after the Transfer Scheme, 1998, the State Govt. transferred the transmission functions of GRIDCO to OPTCL as per the Transfer Scheme, 2005 with effect from 01.04.2005 along with the assets pertaining to transmission business keeping bulk supply functions with M/s. GRIDCO. Hence, OPTCL inherited properties of GRIDCO in regards to transmission business only whereas the State Government had transferred the distribution business from GRIDCO along with the distribution assets much prior to that to the DISCOMs in the year 1998. The assets which have been transferred to SOUTHCO have been evaluated by the commercial, financial and asset valuation working group. The land at 97 places measuring an area of Ac.187.00 including the lands in dispute at Bidyutpuri colony are transferred to SOUTHCO, which was also admitted and confirmed by the then M.D., OPTCL vide their letter No. 4296 dated 23.12.2005 addressed to the CEO, SOUTHCO allowing a passage in the above colony to the residents of Bhabinipur.
- d) The construction of building in question at 'Bidyutpuri Colony' is a Training Centre which will benefit the entire power sector of Odisha at large. The said

construction of Training Centre is approved under the Chairmanship of the Chief Secretary, Government of Odisha. The above construction work order has been issued to one contractor M/s. Sug & Lloyd after completion of formalities of tender process and the said construction work is under progress.

- e) From the date of transfer, the then SOUTHCO and now TPSODL contesting a number of cases before the different authorities against the encroachments/certificate cases and also cases before Civil Courts to protect the interest of the lands, wherein different authorities have satisfied with the ownership and possession of the then SOUTHCO now TPSODL by allowing order of *status quo* in respect of and pertaining to Plot No.267 under Khata No.141 in the mouza-Bidyutpuri colony.
- f) The Utility created post license revocation was in control of these lands and rights to use is vested with TPSODL by the vesting order dated 28.12.2020 in Suo Motu proceeding Case No. 83 of 2020 of the OERC. Therefore, the action of the Petitioner-OPTCL prohibiting the Respondent TPSODL for such construction is not in consonance with such Transfer policy and the present case filed by the OPTCL under section 86(1)(f) and Section 142 of the Electricity Act, 2003 is wholly misconceived under law inasmuch as it does not come within the purview of such provisions of the Act. Hence in the facts and circumstances, the case is wholly devoid of merit and liable to be dismissed.

- 4. After hearing the Parties, it is amply clear that the Petitioner-OPTCL and the Respondent-TPSODL are entities of the Government doing business in power sector. The Petitioner's side does the business of transmission of electricity whereas the Respondent-TPSODL carries out distribution business and their works are complimentary to each other. It appears that the dispute arose between them out of some wrong notion in respect of right of the parties over the disputed land. Be it stated here that the Respondent-TPSODL is fighting different litigations for a long time for protecting the possessory interest over the disputed land. Needless to mention here that merely raising of some structures over the disputed land by the distribution licensee does not divest Petitioner-OPTCL of its ownership and title of the said land if it is so established. This is because Para 60 of the Vesting Order in Case No. 83/2020 states as follows:

*“60. Right to use the land instead of transfer
As per the RFP provisions, the Commission allows TPSODL the right to use the land at nominal rate (at a license fee of Re 1/ year) for the distribution business instead of transfer of land and land rights. TPSODL, TPCL and GRIDCO shall procure necessary approvals and undertake necessary steps for implementation of this para.”*

Moreover, in view of the above direction of the Commission, the ownership of the land shall remain intact as it was on the date prior to the vesting. As per the Orissa Electricity Reform (Transfer of Assets, Liabilities, Proceeding and Personnel of GRIDCO to Distribution Companies) Rules, 1998, Schedule D (Part-1) notified by the State Government, the asset of GRIDCO pertaining exclusively or primarily to the distribution business and distribution undertaking, in the then southern zone, had been transferred to SOUTHCO and subsequently has been inherited by SOUTHCO Utility after revocation of license of SOUTHCO. Pursuant to Reform Rules, 1998, GRIDCO, vide its office order dated 23.12.2003, had also transferred residential colonies of GRIDCO to different DISCOMs including SOUTHCO for maintenance and allotment purpose without transfer of ownership. Therefore, the ownership of all the colony lands which had been inherited by SOUTHCO continued as such which was there before the Reform Rules, 1998 of the State Government. Hence, it is clear that the ownership/title of the land is still with the State Government. In the vesting order, the Commission has also not allowed TPSODL to acquire the title of the land. The Petitioner has also suggested to refer the matter to the Energy Department of Government of Odisha for resolving the dispute.

5. In view of the nature of the dispute, identity of the parties and their interest in power sector, it is prudent for the parties to request Energy Department, Government of Odisha to intervene in the matter and resolve the dispute amicably in view of the Provisions of the Orissa Electricity Reform (Transfer of Assets, Liabilities, Proceeding and Personnel of GRIDCO to Distribution Companies) Rules, 1998. Either side may approach the Government of Odisha in Energy Department for working out acceptable resolution shedding narrow approach to the dispute. The Government of Odisha in Energy Department is advised to complete the whole exercise of resolving the dispute amicably within a period of three months after such submission of application by the parties.
6. With the above observations the petition is disposed of.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Member