

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

Case No. 67/2023

M/s. Utkal Graphites Pvt. Ltd.,	Petitioner
Vrs.		
TPSODL & Others	Respondents

In the matter of : **Application under Section 142 challenging the Show-cause Notice dated 25.08.2001 and consequential notice dated 16.11.2018 & 15.07.2022 of the Respondent –Licensee (TPSODL the then Southco Utility) as per Clause 104 & 105 of the Conditions of the Supply Code, 1998 demanding outstanding energy dues of Old connection.**

For Petitioner: Shri Somnath Patnaik, Learned Advocate.

For Respondents: Shri P.K.Mohanty, Sr.Advocate
 Shri Ashok Kumar Panda, TPSODL

ORDER

Date of Hearing: 01.08.2023

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Consequent upon remand of the matter in terms of the order dated 05.07.2023 passed by Hon'ble High Court of Orissa in WP (C) No.19906 of 2023, this order is pronounced on an application dated 18.07.2023 filed by M/s. Utkal Graphites Pvt. Ltd. praying for reliefs stated hereinafter.

“The complainant humbly prays that the Commission may be pleased to admit the complaint petition and upon hearing the parties allow this application and pass appropriate directions declaring the show cause notice dated 25.08.2001 and consequential notice dated 16.11.2018 and 15.07.2022 as illegal and set aside the same and refund the excess amount if any paid by the complainant and the Opp. Parties be directed to prepare a correct bill by excluding the penal interest and taking into consideration contract demand of 102 KVA as per the agreement, and it is further prayed that:

The Commission may be pleased to direct the Opp. Parties not to take any coercive action pursuant to notice dated 25.08.2001 and consequential notice dated 16.11.2018 and 15.07.2022, pending adjudication of the complaint petition.”

2. Brief facts of the case constitute a long history which is necessary for proper appreciation of the case. Background facts as submitted by the petitioner are stated hereinafter:

- (i) The Petitioner M/s. Utkal Graphites Pvt. Ltd. is a Private Limited Company being represented through its Managing Director which was carrying on business of manufacturing Graphite Flake and Graphite Powder in its factory. The petitioner has its registered office at Jhigidi, Ambodola in the District of Rayagada and it was registered as Small Scale Industrial Unit (SSI Unit) by the District Industries Centre, Rayagada during the period when the Industrial Policy Resolution, 1989 was in force. The petitioner commenced its commercial production w.e.f. 05.01.1996.
- (ii) The Executive Engineer, Rayagada issued show cause notice to the Petitioner company dated 25.08.2001 for unauthorized use of electricity. The Petitioner company seeks to challenge the show cause notice dated 25.08.2001 issued by the Executive Engineer, Rayagada and consequential notice dated 16.11.2018 and 15.07.2022 on the ground that Clause 104 and 105 of the Supply Code, 1998 have no application in the present case and the allegations are false on the face of proforma of information dated 30.06.2001 and 31.07.2001. By such communication, the Licensee has imposed to extract admission/confession under the duress of disconnection of power supply. Such practice is violative of the fundamental rights guaranteed to the petitioner under Article 19(1) (g) of the Constitution of India, 1950 and is against the principles of natural justice, since the physical verification in question as communicated is vexatious as no opportunity was granted to the petitioner nor any notice about such verification was ever issued. The physical verification by the Sub-Divisional Officer (E) MRT Sub-division and JE (E) Muniguda is unilateral. If the same is accepted to be true, the petitioner submits that no verification in fact, was conducted. The allegation is an outcome of the vindictive attitude of the Licensee since the Petitioner challenged the action in a Writ petition in OJC No.8103 of 2001 before Hon'ble High Court of Orissa. The Petitioner vide letter dated 10.08.2001 requested the Licensee to revise the bills in accordance with the terms of the agreement particularly taking into consideration the contract demand.
- (iii) The Petitioner's graphite beneficiation plant and its business activities have been closed during the year 2008 and the power supply to the said plant has been disconnected since 2008.
- (iv) The Petitioner applied for electricity connection to operate its Graphite beneficiation plant by application dated 14.12.1991. The entire quantum of electricity that was applied to be availed was of 101 HP which is equivalent to 87 KVA. The Licensee on the basis of the application made by the petitioner made a calculation of the voltage and by letter dated 16.07.1992 along with the details as per the statement enclosed thereto, intimated the Petitioner about its permission for installation of the unit with 101 HP motors.
- (v) Subsequently another letter dated 05.12.1992 was issued to the Petitioner compelling it to take 102 KVA power load and also the Respondent-Licensee exerted pressure on the petitioner to enter into an agreement for the similar

quantum of contract demand. Since the Petitioner was very eager to set up its beneficiation plant, it had no alternative but to yield to the pressure of the Licensee and entered into an agreement of 102 KVA power load. The Executive Engineer, according to his own calculation, estimated the requirement of the quantum of electricity at 87 KVA but peculiarly to take credit, forced the petitioner to enter into an agreement for 102 KVA power load to categorise the petitioner as a large industry and saddle it with the liability for payment of more charges, and other dues. Such levy of demand was beyond the requirement of the petitioner. However, the Petitioner was under pressure and had no alternative but went on paying dues calculated at 102 KVA.

- (vi) The bills and the calculation sheet would indicate and substantiate about maximum demand that was recorded in the meter which is far below the contract demand. Even half of the quantum of the contract demand is not the requirement of the Petitioner. The Executive Engineer has further committed illegality raising demand towards energy and other charges on the basis of 128 KVA since as per the agreement the contract demand is fixed at 102 KVA.
- (vii) All of a sudden, by a letter dated 29.05.2001 the Licensee directed the petitioner to deposit an additional security amount of Rs.34,805/-. Such demand was based on the contract demand of 128 KVA. The Licensee is liable to pay back/refund the amount collected in excess of the demand which was due against the petitioner. The Petitioner approached the licensee several times but no step was taken by them for the oblique reason to raise demand illegally. The Licensee, on the other hand, in a very peculiar way, raised the above demand of additional security deposit, which was illegal and arbitrary.
- (viii) The Petitioner challenged the demand of deposit of additional security amount and prayed for refund of excess amount paid on the basis of calculation at 128 KVA contract demand instead of 87 KVA in OJC No.8103/2001 before the Hon'ble High Court of Orissa. The complainant during pendency of the writ petition also requested the licensee to revise the bill in terms of the contract demand at 87 KVA and refund the excess amount by its representation dated 10.08.2001. The Hon'ble High Court by order dated 04.07.2001 in the connected Misc. Case No.8506/2001, directed the licensee not to disconnect the power supply.
- (ix) The petitioner to its utter dismay and surprise found a letter hung at the factory premises dated 25.08.2001 from which it transpires that a verification was conducted by the Sub-Divisional Officer (E) MRT Sub-Division and the Junior Engineer (E) Muniguda. It has been further stated in the said letter that the petitioner was dishonestly abstracting and consuming power unauthorizedly by tampering seals of test terminal Box by reversing the polarity of 'B' phase in first instance from 21.12.1998 and resetting the phase in normal position on 11.03.2000. It has been further stated that the 'Y' phase polarity is reversed till that date, which obstructed the correct measurement of power drawn. In the said letter, the licensee directed the petitioner to show cause why penal charges under clause 105 of OERC

Distribution Conditions of Supply Code, 1998 at the rate of double tariff for the unauthorized abstraction would not be levied within 01.09.2001. The Licensee directed, "that in view of the facts the Respondent did not acknowledge the above fact in the prescribed proforma to treat this as the disconnection notice for disconnection of power supply to your premises on dated 02.09.2001 without any further notice".

- (x) The above verification on the face of it, was false since the Sub-Divisional Officer (Electrical) as a matter of routine practice verified the meter and other Electricity line for reading the meter to send the same to the Executive Engineer for raising monthly bills. The meter reading was always taken in presence of the representative of the consumer. The readings taken on 30.06.2001 and 31.07.2001 would indicate to show about the information that were required to be furnished and the nature of work done from the proforma information. Therefore, it could be safely concluded that if anything had happened to the meter, the same could be attributed to the Sub- Divisional Officer and the petitioner was not liable for the same.
- (xi) Challenging the show-cause notice dated 25.08.2001, the Petitioner approached the Hon'ble High Court of Orissa in O.J.C No.11286 of 2001 and the Hon'ble High Court of Orissa as an interim measure vide their Order dated 30.08.2001 have been pleased to allow the Petitioner to file its reply and directed the Licensee not to take any final decision regarding dis-connection of the power supply without leave of the Hon'ble Court and the petitioner would go on paying the current dues regularly.
- (xii) The aforesaid case was disposed of by the Hon'ble Court vide its order dated 27.08.2018 giving liberty to the petitioner to file response to the show-cause notice for consideration by the competent authority and the same would be considered in accordance with law. The said order of the Hon'ble High Court is extracted here below:

"In this case the show cause notice dated 25.08.2001 is under challenge.

Learned Counsel for the petitioner, at the outset, submits that the petitioner may be allowed to file his reply in terms of the aforesaid show cause so that it may be considered by the competent authority.

Mr. B.K. Nayak, Learned Counsel appearing for the opposite party-SESCO has raised no objection.

In view of such submission, the writ petition is being disposed of without interfering with the show cause, giving liberty to the petitioner to file his response to the same for consideration by the competent authority.

The petitioner will file his response within two weeks from today and the concerned authority will consider it in accordance with law and take decision within period of two weeks thereafter.

With the above observation and direction the writ petition stands disposed of.

Interim orders, if any, stands vacated.”

- (xiii) After disposal of the aforesaid application, the licensee vide its demand notice dated 16.11.2018 called upon the petitioner to deposit a sum of Rs 1,29,74,143/- within a period of 15 days failing which legal action as provided under law would be taken against the petitioner.
- (xiv) Thereafter, the licensee vide its notice dated 15.07.2022 informed the petitioner that as per verification of office records and due Field Inquiry, outstanding energy dues of old service connection at the premises of the petitioner had been found to be Rs.1,29,02,255/- and the petitioner had been requested to clear the said dues failing which the power supply would be disconnected for non-payment of the arrear dues.
- (xv) The notice dated 25.08.2001 would clearly reveal that at the first instance of alleged tampering seals of Test Terminal Block (TTB) was from 21.12.1998 and re-setting the phase in normal position on 11.03.2000 had no basis as the same had been chosen to justify for a cause to levy heavy demand under the alleged-plea of abstraction of the energy.
- (xvi) The provisions of the Code as referred to, in the notice dated 25.08.2001 was not applicable to the present case as the entire allegation with regard to abstraction of energy was based on the demand of adjustment and refund at 87 KVA contract demand.
- (xvii) The petitioner was never aware of any tampering of the Test Terminal Block (TTB) of B-Phase and the allegations that while testing the meter, it was found to be minus 73.42% slow B-Phase CT reverse from 21.12.1998 to 11.03.2000 and Y-Phase reversed since 11.03.2000 at TTB did not mean that the petitioner had tampered with the meter and therefore the allegation of suspected tampering relating to actual consumption was nothing but a very casual remark by the Licensee with a malicious intention.
- (xviii) The Licensee without adopting various modes prescribed for the purpose of inspecting the meter had initiated punitive action against the petitioner by illegally imposing penal bill. Moreover, the bills which had been raised for the plant was for higher contract demand though the maximum demand had never gone beyond 55-60 KVA. The petitioner brought the said aspect to the notice of the Licensee, but the bills had never been revised and the Licensee had illegally raised bills on the basis of 128 KVA. The calculation sheet prepared by the Licensee for the alleged period had no basis as the charges had been raised on the basis of 128 KVA which was contrary to the agreement wherein the contract demand was fixed at 102 KVA.
- (xix) The Licensee had resorted to utter falsehood and made outrageous allegations against the petitioner on the basis of suspected tampering. The petitioner had never tampered with the meter in any manner and hence the penal provisions

were not attracted and the Licensee had not proved the allegations in terms of the provisions contemplated under the statute and the regulations.

- (xx) The petitioner had approached the GRF invoking the Regulations of the OERC (Grievances Redressal Forum & Ombudsman) Regulations, 2004 challenging the show cause notice dtd.25.08.2001 and consequential notice dated 16.11.2018 and 15.07.2022 on the ground that Regulation 104 and 105 of the Supply Code, 1998 had no application in the present case and the allegation were false on the face of proforma information dated 30.06.2001 and 31.07.2001. The aforesaid application filed before the GRF was registered as Consumer Case No. 331 of 2022.
- (xxi) After registration of the aforesaid complaint before GRF, no intimation was given to the petitioner nor his Advocate to appear before the Forum for hearing of the aforesaid complaint. The Licensee vide its notice dated 09.06.2023 had intimated the petitioner that the GRF vide its order dtd.15.02.2023 dismissed the aforesaid complaint filed by the petitioner on the ground that the said grievance is not coming under the purview of the Forum as the dispute relates to penal claims made as per OERC Distribution Conditions of Supply Code, 1998 with pilferage of energy by tampering meter. The said order dated 15.02.2023 was communicated to the petitioner along with the aforesaid notice of disconnection dtd.09.06.2023 wherein the petitioner was directed to deposit the alleged outstanding dues in respect of Consumer No. 311001040063 and said notice had been issued by the Licensee under Section 56(1) of the Electricity Act, 2003. The aforesaid disconnection notice and the order dated 15.02.2023 passed in C.C. No.331 of 2022 has been communicated to the petitioner through registered post. Relevant portion of the order dated 15.02.2023 of the GRF-Jeypore is quoted below:

- *“The Complaint is devoid of any merit.*
- *The grievance is not coming under the purview of the Forum as the dispute relates to penal claims made as per OERC Distribution Conditions of Supply Code, 1998 due to pilferage of energy by tampering meter and other matters.*
- *The Complainant is advised to clear the legitimate dues to avoid legal action as may be taken for recovery of dues by Respondent.*

With this pronouncement the case is disposed of”

- (xxii) Challenging the order dated 15.02.2023 passed in CC No.331 of 2022 by the GRF, Jeypore, the petitioner approached the Hon'ble High Court of Orissa in W.P. (C) No. 19906 of 2023 and the Hon'ble High Court of Orissa vide their order dated 05.07.2023 has been pleased to dismiss the aforesaid

writ application with liberty to the petitioner to bring appropriate proceeding before the Commission within a period of two weeks. The aforesaid order of the Hon'ble Court is quoted below:

"Heard learned counsel for the Parties.

2. Even though submission is advanced on the basis of Clause-2.4 of the Electricity Laws in Orissa, copy of which finds place at page-120 of the Brief and on perusal of the impugned order, this Court nowhere finds there remains a doubt in the mind of the forum so as to the forum making a reference to the Commission for clarification. In such event this Court finds Petitioner if has matter within the jurisdiction of the Commission, there may not be any embargo in bringing such dispute before the Commission for his lawful disposal. The Writ Petition has no ground to be entertained at this stage, which is dismissed but however with liberty to the Petitioner if so advised to bring appropriate proceeding before the Competent Authority.

It is made clear that this Court has not expressed any opinion on merit involved herein and independent decision has to be taken by the Commission and/or the forum entertaining into such exercise. In the event a compliant and/or a grievance is brought before the Commission within a period of two weeks hence, the same may be heard and disposed of on its own merit."

- (xxiii) The impugned order dated 15.02.2023 has been passed by the Forum without affording any opportunity of hearing to the petitioner. The learned forum after admitting the aforesaid complaint has erroneously came to a finding that the said grievance is not coming under the purview of the Forum as the disputes relates to penal claims made as per the OERC (Distribution Conditions of Supply) Code, 1998 with pilferage of energy by tampering meter.
- (xxiv) The Licensee had issued the disconnection notice in respect of Consumer No. 311001040063 which is/was a separate operational unit altogether situated at Samodala and the petitioner had been regularly paying the dues towards consumption of electricity for the said unit. The present dispute relates to old Consumer No.22 L.I. and new Consumer No.311001040144 wherein the licensee has alleged that the complainant has been dishonestly abstracting and consuming power unauthorizedly by tampering TT Block and the same was subject matter of challenge in the earlier Writ Application filed by the petitioner before the Hon'ble High Court of Orissa.
- (xxv) There are two units of M/s. Utkal Graphites Pvt. Ltd., one unit is situated at Ambodola and the other unit is situated at Samodola and there are two separate distinct agreements executed by the licensee with the petitioner's Company, having two different service consumer numbers. The licensee in the disconnection notice dated 09.06.2023 has illegally and arbitrarily demanded the alleged outstanding dues in respect of Consumer No.311001040063 which

is a running unit and the petitioner has been paying the current electricity dues to the licensee and there is no outstanding due in respect of the unit situated at Samodola.

- (xxvi) The allegations of tampering with the seals of the TTB cannot be sustained as there was no allegation that the outer seal of the TTB was broken or tampered and therefore, one cannot have access to tamper an inner seal. The B- Phase wire was also located inside the T.P. Box and hence, the same could not be tampered or cut without breaking the outer seal and such the allegations appeared to be improbable. Further, the meter reading in comparison with the previous meter reading of 6 months itself falsifies the allegation that the B-Phase wire was reversed thereby disrupting the power supply to the meter and in every month, the meter was being inspected by the officers/ staff of the Licensee who had never reported regarding any tampering or breaking of seal.

Citing the aforesaid facts and circumstances the petitioner has prayed for quashing of show cause notice dated 25.08.2001 and consequential notices dated 16.11.2018 and 15.07.2022 which are alleged to be illegal and other reliefs as stated in paragraph 1 of this order.

3. The averments of the Respondents-TPSODL are concisely summarized as stated hereinafter.
- (a) On the application of the petitioner, the power supply was given to its industry for a contract demand of 120 KVA on 13.07.1994 on execution of an agreement on 11.07.1994. As per the provision of the agreement and OSEB General Conditions of Supply Regulation, the consumer was required to pay the security deposit. Clause (V) and (VI) of the agreement further provided that the consumer before the commencement of supply should make security deposit of Rs. 71,879/- in cash in favour of the Engineer. The said clause further also stipulated that the consumer should make any additional security deposit as may be prescribed by the Board from time to time. On the basis of agreement and on the deposit of security amount as mentioned in the agreement, the power supply was effected.
- (b) After enactment of the Orissa Electricity Reform Act, 1995, the OERC was constituted and it had made OERC (Distribution and Conditions of Supply) Code, 1998 which was applicable to the consumers as well as to the suppliers. Clause -20 of the said code deals with the security deposit. It provides any person entering into any agreement with the licensee for supply of power, shall deposit of such amount, the minimum charges for supply of two months or less as determined by the licensee from to the time for the relevant consumer category. In case of fresh contract demand, security deposit shall be accordingly made. On the basis of the above guidelines, due to enhancement of tariff, the

Licensee calculated the two month charges and directed the consumer to make payment of additional security deposit of Rs.34805/- within a period of 30 days. It was also directed that in case of failure, power supply should be disconnected. Challenging the said communication of supply Engineer towards the deposit of additional differential security deposit, the petitioner filed a case before the Hon'ble High Court of Orissa in OJC No. 8103/2001.

- (c) On 24.08.2001, the meter of the petitioner was tested by SDO, MRT, Jeypore & JE, Muniguda in the presence of the consumer & it was detected that there was no seal on the meter terminal cover & the seal on the test terminal block was tampered. After testing, it was found that the meter was recording (-)73.42 % slow. During the inspection, it was also detected that "B Phase" CT Reverse from 21.12.98 to 11.03.2000, & "Y Phase" reverse from 11.03.2000 till that date at TTB. The observations of the SDO, MRT which found place in the meter test report is quoted below:

"While testing the meter it was found to be -73.42% slow "B Phase" CT Reverse from 21.12.98 to 11.03.2000, & " Y Phase" reverse since 11.03.2000 & TTB". B Phase PT also loosely connected. The meter connection were not corrected & the meter was sealed as it's condition".

- (d) A digital SEMS meter was installed in the premises of the consumer to have the correct meter reading. If the consumer tampered the meter in any manner, the said meter would reflect about the time, date, year of tempering & also show the nature of tempering phase-wise. When the consumer found the observation of the MRT, he refused to sign on the report & declined to accept the copy of the same.
- (e) After due verification of the meter, the MRT staff reported the same to the Executive Engineer (Elect.) regarding the tampering of meter made by the petitioner. After receipt of the same, the Executive Engineer informed the petitioner in its communication dated 25.08.2001 about the tampering & requested to acknowledge the test report & to show cause as to why the penal charges should not be made in accordance with the code and that as to why the power supply should not be disconnected. When the petitioner refused to accept both the documents, the same were pasted on the wall of the premises of the factory in the presence of the petitioner & witnesses & the signature of the witnesses were taken on the same.
- (f) On 29.08.2001, the Electrical Inspector verified the premises of the consumer along with officers of the petitioner's company & it was detected that the meter was recording 18 KW load while the drawl was 141 even though the drawl was 144 MTs. Though the petitioner did not sign the said inspection report but accepted a copy of the document on 04.09.2001 in presence of officers of the

management & the Asst. Electrical Inspector. The meter was reportedly tampered with and also rectified.

- (g) The above mentioned facts would clearly indicate that the petitioner had tampered the meter & abstracted the power supply bypassing the meter in illegal manner. As per the distribution code, penal bill at Rs.7,37,633/- was imposed at the double the rate of tariff prior to the date of inspection. The action of the Licensee in imposing penal bill was in accordance with the provisions of the Distribution Code, 1998.
- (h) Though the testing was made in presence the consumer by the MRT staff, the petitioner refused to sign the same. After receipt of the notice, the consumer was informed by the supply Engineer about such testing and requested him to acknowledge the said report and to show cause regarding such tampering. If the petitioner acknowledged the said report, the supply should be disconnected. But the consumer refused to accept the same, i.e. the communication dated 25.08.2001. Finding no way, in the presence of the consumer and in presence of witnesses, the same was pasted in office premises of the consumer. In this regard, the Licensee had not committed any illegality or irregularity while issuing notice to the petitioner in accordance with the Regulation. On issuance of said notice, a writ application was filed by the petitioner in OJC No. 8103/2001 which has been disposed of with a reasoned order.
- (i) Although initially the contract demand enhanced to 128 KVA, with the approval of the S.E, Jeypore and after execution of necessary agreement for 128 KVA, the power supply was given. The allegation that by force, the contract demand was enhanced 128 KVA is not correct. On the basis of the contract demand, the additional security deposit was calculated and the consumer was directed to make payment of Rs.34,805/-.
- (j) The meter was verified by SDO, MRT and I.E, Muniguda in presence of the consumer. After due verification, it was detected that the meter has been tampered by the consumer and the same was recording less by 73.24 %. Though the consumer was present at the time of testing, he refused to sign the same. After receipt of the report from MRT authority, the supply Engineer on 25.08.2001 informed the petitioner about the tampering and requested him to show cause and to acknowledge the report failing which the supply should be disconnected. The consumer had also refused to accept the same which was tested on the premises of the consumer in presence of the consumer and witnesses.
- (k) As per the provision of clause 54 of the Distribution Code, 1998, the consumer shall be responsible for the safety of the meter and metering equipments on his premises from theft, damage and interference. But the consumer tampered with the meter due to which, the same was recording -73.24% of the consumption. On

the allegation that no fault was observed by the meter reader while taking meter reading on 30.06.2001 & 31.07.2001, it is submitted that on those two dates, the meter reading was taken and it would not be possible on the part of the Meter Reader to know the tampering was made inside the meter. Considering the fact of tampering and dishonest abstraction of electricity, the consumer was imposed with the penal bill for a period of one year prior to the date of detection as provided under Clause 105(2) of the Supply Code, 1998.

- (l) The petitioner approached the Hon'ble High Court of Orissa in OJC.No.11286/2001 to quash the notice dated 25.08.2001 and to hold that Clause 104 and 105 of the Distribution code, 1998 have no application to the present case. The matter was disposed of on 27.08.2018 basing on the prayer made by the consumer to move before the concerned authority within two weeks from the date of order and the concerned authority to consider it in accordance with law and take decision within two weeks thereafter. But the petitioner did not approach the concerned authority within the time as fixed by the Hon'ble High Court. After that, the said order attained its finality. But suppressing the factual aspects regarding filing of representation by the petitioner within stipulated time before the concerned authority, the complaint filed before the Hon'ble GRF was not permissible at all.
- (m) The tampered information report has specified the occurrence of the tampering and less recording is owing to un-authorized abstraction of energy. A decision was taken to impose penal bill under Regulation 105 of OERC Distribution Supply Code, 1998 to the tune of Rs.17,37,673/- towards penal charges and Rs. 23,21,587/- towards loss of unit which were also communicated to the consumer by Regd. Post on 07.09.2001 and 06.04.2002 respectively. By non-deposit the said amount and non-payment of monthly current bill in time, the total arrear accumulated to Rs.1,29,74,143/- as on 15.11.2018. The said amount was demanded when the petitioner failed to file his application before the concerned authority as per the direction of Hon'b1e High Court as referred to above.
- (n) A digital SEMs meter was installed in the premises of the consumer to record the correct consumption. In case of tampering, the same has been done at any point of time, the meter was recording the same indicating the time of tampering and the nature of tempering. The instrument used for testing was also put into service in respect of all consumers. With the help of instrument of testing meter all the facts narrated in this paragraph constituting unlawful abstraction was detected. It showed that the petitioner was in habit of tampering meter and accordingly penal bill was imposed. The allegations regarding initiation of punitive action against the consumer and imposition of penal bill is not correct at all.

- (o) The penalty was imposed on the basis of the report submitted by the MRT which specified the occurrence of the tampering and less recording was owing to manipulation of energy meter.
- (p) The present petition is liable to be rejected as this Commission has lack of jurisdiction on the issue involved on imposition and/or realization of penal amount in pursuance of detection of unauthorized use of power by means of tampering of meter by the petitioner. In this regard the judgement of the Hon'ble Supreme Court in the case of MSEDCL Vrs. Lloyds Steel Industries Ltd., reported in AIR 2008 SC 1042, may be referred to, wherein Hon'ble Court have declared that the Regulatory Commission has no jurisdiction to decide dispute between licensee and consumer.
- (q) Further, the present petition is liable to be rejected on the ground of inordinate delay and laches on the part of the petitioner pertaining the issues involving cause of action dated 25.08.2001. The Hon'ble High Court of Orissa vide their judgement dated 27.08.2018 in OJC No.11286 disposed of the matter granting liberty to the petitioner to move to the concerned authority. But the petitioner did not abide by the same. Consequently, the petitioner accepted the notice from the licensee. Therefore, the petition is liable to be rejected, as the law on this aspect has already been clarified in the ratio of the following decision.

State of Orissa Vrs. Hata Swain and another, 1999 (II) OLR 665 "When the High Court has directed a party to approach the learned Court below within a fixed time and if the party does not approach the lower Court within the such time in that case, the lower Court cannot extend time for maintaining the petition of the petitioner."

- (r) In view of the above, the petition is devoid of any merit and hence the same may be dismissed.

Commission's Analysis

4. Heard the petitioner and respondents through hybrid mode (both physical and virtual). We have considered the submissions of the petitioner and respondents and have scrutinized the record.

The contention of the Respondent-TPSODL that the present petition is not maintainable within the limited scope of Section 142 of the Electricity Act, 2003 does not appear to be tenable in view of the specific direction issued by the Hon'ble High Court of Orissa in WP (C) No.19906 of 2023 and therefore the said contention fails.

5. It is evident from the observation of the GRF, Jeypore in their order dated 15.02.2023 that the dispute involves tampering of the meter and subsequent imposition of penalty by the Engineer of the distribution licensee for unauthorised abstraction of electricity and such dispute as raised by the petitioner was not maintainable before the GRF due to lack of inherent jurisdiction and the GRF rejected the petition falling beyond the jurisdiction.

While refusing to entertain the application of the petitioner, GRF in its order dated 15.02.2023 did not specify any competent authority before whom the petition of the petitioner was maintainable for redressal of his grievance. At this point, it is pertinent to mention the observation of the Hon'ble High Court in their order dated 05.07.2023 passed in WP(C) 19906 of 2023, which is quoted below:

“Heard learned counsel for the Parties.

2. Even though submission is advanced on the basis of Clause-2.4 of the Electricity Laws in Orissa, copy of which finds place at page-120 of the Brief and on perusal of the impugned order, this Court nowhere finds there remains a doubt in the mind of the forum so as to the forum making a reference to the Commission for clarification. In such event this Court finds Petitioner if has matter within the jurisdiction of the Commission, there may not be any embargo in bringing such dispute before the Commission for his lawful disposal. The Writ Petition has no ground to be entertained at this stage, which is dismissed but however with liberty to the Petitioner if so advised to bring appropriate proceeding before the Competent Authority.

It is made clear that this Court has not expressed any opinion on merit involved herein and independent decision has to be taken by the Commission and/or the forum entertaining into such exercise. In the event a compliant and/or a grievance is brought before the Commission within a period of two weeks hence, the same may be heard and disposed of on its own merit.

6. It is clear that the dispute raised by the petitioner is to be dealt in accordance with the OERC Distribution (Conditions of Supply) Code, 1998 as the initial cause of action involving slow moving of meter with alleged contrivance occurred from 21.12.1998 to 24.08.2001 and the show cause notice for penalty was issued on 25.08.2001. Since the dispute involves punitive imposition of penal charges on the Petitioner, the law then prevalent i.e. the OERC (Conditions of Supply) Code, 1998 with regard to imposition of penal charges shall govern the dispute. The riddle has been well elucidated by the Hon'ble Supreme Court of India in the case of Himachal Pradesh State Electricity Regulatory Commission and another vrs. Himachal Pradesh State Electricity Board, (2013) 12 SCALE 397, wherein it has been observed in following words:

“28. We have referred to the aforesaid paragraphs as Mr. Gupta has contended that when there is repeal of an enactment and substitution of new law, ordinarily the vested right of a forum has to perish. On reading of Section 185 of the 2003 Act in entirety, it is difficult to accept the submission that even if Section 6 of the General Clauses Act would apply, then also the same does not save the forum of appeal. We do not perceive any contrary intention that Section 6 of the General Clauses Act would not

be applicable. It is also to be kept in mind that the distinction between what is and what is not a right by the provisions of the Section 6 of the General Clauses Act is often one of great fitness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere hope, or expectation of, or liberty to apply for, acquiring right (See **M.S. Shivananda v. Karnataka State Road Transport Corporation and Others**[11]).

29. In this context, a passage from **Vijay v. State of Maharashtra and Others**[12] is worth noting:-

“....It is now well settled that when a literal reading of the provision giving retrospective effect does not produce absurdity or anomaly, the same would not be construed to be only prospective. The negation is not a rigid rule and varies with the intention and purport of the legislature, but to apply it in such a case is a doctrine of fairness.”

30. We have referred to the aforesaid passage to hold that tested on the touchstone of doctrine of fairness, we are also of the opinion that the legislature never intended to take away the vested right of appeal in the forum under the 1998 Act.

31. On the basis of the aforesaid analysis it can safely be concluded that the conclusion of the High Court that it had jurisdiction to hear the appeal is absolutely flawless.”

7. On cumulative reading of Section 185 (2) (a) & Section 185 (5) of the Electricity Act, 2003, it is amply clear that the dispute raised by the petitioner shall be dealt in accordance with provisions under Regulation 110 of the Orissa Electricity Regulatory Commission Distribution (Conditions of supply) Code, 1998. As a matter of pertinence, Regulation 110 of the Supply Code, 1998 is quoted below:

“110(1) A consumer aggrieved by any action or lack of action by the Engineer under this Code may file a representation within one year of such action or lack of action to the designated authority of the licensee, above the rank of Engineer who shall pass final orders on such a representation within thirty days of receipt of the representation.

(2) A consumer aggrieved by the decision or lack of decision of the designated authority of the licensee may file a representation within forty-five days to the Chief Executive Officer of the licensee who shall pass final orders on such a representation within forty-five days of receipt of the representation.

(3) In respect of orders or lack of orders of the Chief Executive Officer of the licensee on matters provided under Section 33 of the Act, the

consumer may make a reference to the Commission under Section 37(1) of the Act.”

8. The above stated statutory provisions cannot be sidetracked for the purpose of dealing with the grievance of the petitioner raised in the petition. In view of the above quoted statutory provision under Regulation 110 of the Supply Code, 1998, the petitioner is legally enjoined to present the application before the Designated Authority of the Distribution Licensee above the rank of Engineer who shall pass final order on the representation of the petitioner. Hence we direct that the present petitioner shall agitate the matter before the Designated Authority of the Distribution Licensee, above the rank of Engineer, who shall pass the final order within thirty days of receipt of representation in accordance with law avoiding any questionable delay. Both the parties are directed to appear before the Designated Authority of the Distribution Licensee above the rank of Engineer i.e. before the Superintending Engineer (Electrical), Rayagada Electrical Circle, TPSODL, Rayagada on 16.08.2023 to seek proper instruction in the matter of conduct of case.
9. With the above observation and direction, the petition stands disposed of.

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

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. C. Mahapatra)
Chairperson