

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

**Case No. 74/2023**

M/s. Shyam Sundar Cold Store ..... Petitioner  
Vrs.

The Executive Engineer (Electrical), Bhadrak North Electrical Division,  
Bhadrak, TPNODL, Dist.- Bhadrak ..... Respondent

**In the matter of: Application under Section 142 of the Electricity Act, 2003 for non-implementation of order dated 28.06.2023 of the Ombudsman-II passed in C.R. Case No.63 of 2022.**

**For Petitioner:** Shri Rabin Kishore Behera, Authorized Representative.

**For Respondent:** Shri Ratiranjan Rout, Executive Engineer (Electrical), BNED, TPNODL

**ORDER**

**Date of Hearing: 22.08.2023**

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The Petitioner-M/s. Shyam Sundar Cold Store has filed the present petition under Section 142 of the Electricity Act, 2003 for initiating action against the Respondent-Executive Engineer (Electrical), Bhadrak North Electrical Division, Bhadrak, TPNODL for non-compliance of the order dated 28.06.2023 passed by the Learned Ombudsman-II, Bhubaneswar in CR Case No.63 of 2022.

2. According to the Petitioner, it has set up a prawn processing-cum-Cold Storage at Kismat Krushnapur, Basudevapur, Bhadrak under Commercial Agro Enterprises (CAE). There were 150 farmers in that area carrying out aqua culture in a cluster. The Petitioner himself is a prawn farmer. The Petitioner states that as per the State Agricultural Policy, 2013, in absence of cold storage facility/cold chain, the State and the State Government would promote cold storage facility by providing subsidy and other incentives. It is also provided in Agricultural Policy, 2013 that electricity tariff for cold storage would be at special rates (Agro Industrial Consumers) instead of industrial/commercial tariff inasmuch as the said Policy vide paragraph 7.2(C) provides that the State Government would provide electricity to Ice Plants where the private enterprisers and small scale Aquaculture can co-exist. The Petitioner further states that as per the OERC Distribution (Condition of Supply) Code, 2019, the Petitioner's unit comes under "Allied Agricultural Activities". After recommendation of the District Level Committee, the Collector, Bhadrak had approved the said unit as CAE and issued go ahead letter. The Petitioner further submits that he was an aqua-culturist, more

specifically prawn farmer and his unit was not located under any NAC or Municipality. The Government of Odisha have recognized him as progressive prawn farmer and as such, the Petitioner claims to treat his plant/cold store under Allied Agricultural Activities or Allied Agriculture Industrial Activities and thus, by no stretch of imagination, it can be treated as Large Industry since the said firm is not producing any industrial product as per the Large Industrial category of consumer in terms of the classification of consumers in the OERC Supply Code, 2014 as well as the OERC Supply Code, 2019, and therefore, it is prayed for compliance of the order dated 28.06.2023 passed by the Learned Ombudsman-II, Bhubaneswar in CR Case No.63 of 2022.

3. According to the Respondent-TPNODL, the Petitioner had applied to avail power supply to his Ice factory, wherein, the applicant had specifically mentioned the purpose of power supply for an Ice factory. As the said Ice factory requires 222 KVA power supply, such factory has been coming under Large Industry tariff category as per the Regulation 80(10) of the OERC Supply Code, 2004, as well as Clause (f) of the Regulation 138 of the OERC Supply Code, 2019. As per Clause (l) of Regulation 138 of the OERC Supply Code, 2019 'Large Industries' are described as "This category relates to supply of power to Industries with a contract demand of 110 KVA and above, But below 25000 KVA where power is substantially utilized as motive force for industrial production".

The petitioner after going through all the terms and conditions as well as the provisions of the OERC Supply Code, 2004 entered into agreement with the distribution licensee on 12.07.2018. In the agreement, it has also been specifically mentioned the supply of electricity is for Ice factory and the licensee has agreed to supply the same. Thereafter, the petitioner became a consumer of electricity under Large Industry category since 25.07.2018 bearing consumer No.DBD-118074, SC No.1210 0000 00063 under the Respondent having contract demand of 222 KVA.

As per the Respondent-TPNODL, the Petitioner's unit is one Ice factory and he is availing power supply for manufacturing and producing the Ice cubes only for his own use and use of the nearby people. No fishery activities are undertaken by the Petitioner in his unit. Therefore, the Petitioner's unit is neither a fish/prawn processing unit nor a cold storage. Hence, it is neither coming under Allied Agricultural Activities nor Allied Agro-Industrial Activities as described in the OERC Distribution (Conditions of Supply) Code, 2019.

The Respondent further submits that it was clarified to the Petitioner that the bills served on him under Large Industry category was genuine and justified inasmuch as the Petitioner had been using the power supply for production of Ice cubes only.

4. Being aggrieved by the decision of the Respondent-TPNODL by treating him as Large Industry, the Petitioner preferred to approach the Learned GRF, Balasore in Consumer Complaint No.255 of 2022 for change of categorization of his unit from Large Industry

category to CAE/Agriculture category and refund of additional tariff amount which had been charged on him from 2018. After hearing of the parties, the Learned GRF, vide their order dated 08.09.2022, had dismissed the above case of the Petitioner with the following order:-

*“Hence it is neither coming under this category of Allied Agricultural Activities under Regulation 138(f) nor under the category of Allied Agro-Industrial Activities under Regulation 138(g) of OERC Distribution (Conditions of Supply) Code, 2019.*

*In this event, the Forum is of the opinion that the application of the complainant for change of tariff from large industry to either Allied Agricultural Activities or Allied Agro-Industrial Activities tariff is not valid in the eyes of the law as such we hold that the present complaint is liable to be dismissed.*

*In the above facts and circumstances, the Forum finds it appropriate to order that the Grievance No.255 of 2022 dated 19.07.2022 stands dismissed.”*

5. Thereafter, the Petitioner challenged the aforesaid order of Learned GRF, Balasore before the Ombudsman-II, Bhubaneswar for intervention and upon hearing the parties, the following order was issued by the Learned Ombudsman-II on 28.06.2023:

*“In view of the above facts and circumstances, this Authority pronounces the following order:*

*The respondent is directed to revise the bills of the petitioner’s Ice Plant M/s. Shyamsundar Cold Store from the day one of its power supply treating as Allied Agro Industrial Activities category consumer and serve the revised bill to the petitioner within 15 days from the date of his Order and file compliance of the above within 15 days thereafter before this Authorities.*

*The case is accordingly disposed of”*

6. Having heard the respective submissions of the parties, the Commission finds that the Order dated 28.06.2023 of the Learned Ombudsman-II, Bhubaneswar, appears to be quite ambiguous in nature inasmuch as no clear or specific observation/direction has been given by the Learned Ombudsman-II with regard to any provision of the OERC Distribution (Conditions of Supply) Code, 2004 or the Supply Code, 2019 under which the conclusion for the order to be executed has been drawn. Further, in his visit to the Petitioner’s industry, the Learned Ombudsman-II found that there was an Ice plant, making only Ice slabs. Another portion was being used for processing the prawns collected from the prawn culturists/harvesters, washing, separating and packing in trays with ice and using air tight containers to send the products to different parts of India. From the above observations of the Ombudsman-II, it is not clear as to whether the Petitioner had cold storage facility to preserve the prawns collected from various prawn culturists/harvesters and it is also not clear whether power supply is made from the same source for the activities being carried out separately. In addition, the submissions of the Respondent that the Petitioner has established the unit for manufacturing of Ice cubes for his own use and use of the nearby people and it is neither a fish/prawn processing unit nor a cold storage unit, needs to be duly addressed. In

that view of the matter, we do not consider it proper for initiation of proceeding under Section 142 of the Electricity Act, 2003 at this stage.

7. In view of the above, we find it appropriate to remit back the case to the Learned Ombudsman-II, Bhubaneswar to pass a clear order without any ambiguity, after fresh hearing of the matter by giving opportunity to the parties. Accordingly, the matter is remitted back to the Learned Ombudsman-II, Bhubaneswar to pass the final order. The parties are directed to appear before the Learned Ombudsman-II on 05.09.2023 at 11.00 AM for seeking appropriate instruction in the matter of hearing.
8. With the above observation, the case is disposed of.

Sd/-  
**(G. Mohapatra)**  
**Member**

Sd/-  
**(S.C. Mahapatra)**  
**Chairperson**