

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

Case No. 03/2024

M/s. Suraj Products Ltd.

..... Petitioner

Vrs.

The Executive Engineer (Elect.), TPWODL,
Rajgangpur Electrical Division,
Rajgangpur, Dist.- Sundargarh

..... Respondent

In the matter of: **Application under Section 142 of the Electricity Act, 2003 alleging non-compliance of order dated 28.06.2023 of the Ombudsman-II passed in C.R. Case No. W-14 of 2022.**

For Petitioner: Shri A.K. Sahani, Authorized Representative

For Respondents: Shri Amaresh Chandra Bal, Deputy Manager (Legal), Shri K.C. Nanda, G.M (RA & Strategy), Shri Akash Dash, Head Associate (Legal), TPWODL.

ORDER

Date of Hearing: 30.04.2024

Date of Order: 18.05.2024

The Petitioner M/s. Suraj Products Limited has filed the present complaint under Section 142 of the Electricity Act, 2003 praying for the following reliefs:

“For the interest of justice and equity, the Hon’ble Commission may graciously be pleased to admit this Petition and direct the Respondent to implement the Order No.66 (2) dated 28.06.2023 in Case No. W-14 of 2022 of the Ombudsman-II, OERC, Bhubaneswar.

And

The Hon’ble Commission may take action against the Respondent as contemplated under Section 142 of the Electricity Act, 2003.

And

Any other relief/s may please be extended to the Petitioner as deemed fit by the Hon’ble Commission and for which act of kindness the Petitioner as in duty bound shall ever pray.”

2. The relevant facts of the case required for the purpose of appreciating the controversy involved in this case may be stated as follows:

- a) The Petitioner's industry is having Consumer No.813000000052 with contract demand of 4800 kVA. The supply voltage to that industry is 33 kV. The Consumer is an HT consumer (Steel Plant). According to the Petitioner, Respondent-Licensee has not allowed the load factor rebate special discount benefit to its Unit as per the RST order for the financial year (FY 2022-23) at Para-204. Such para reads as below:

"204. All HT industrial consumers (Steel Plant) having Contract Demand (CD) of 1 MVA and above shall get a rebate on energy charge on achieving the load factor as given below for the FY 2022-23.

	<u>CD upto 6 MVA</u>	<u>CD above 6 MVA</u>
<i>For load factor of 65% and above upto 75%</i>	<i>10% on energy charge</i>	
<i>For load factor above 75% upto 85%</i>	<i>15% on energy charge</i>	<i>8% on energy charge</i>
<i>For load factor above 85%</i>	<i>20% on energy charge</i>	<i>10% on energy charge.</i>

The above rebate shall be on energy charges of entire unit consumption. Load reduction shall not be permitted to such category of industry for availing this rebate during the financial year 2022-23."

- b) As per the RST order for FY 2022-23 Para-204, 205 & 206, the load factor rebate /Special Discount Benefit should be extended to the Petitioner's Industry and there should not be any misinterpretation on such RST order.
- c) The Petitioner submits that Note-(vi) of Annexure-B of RST order for FY 2022-23 relates to Para-204 of RST order. As per such RST order for FY 2022-23, the Petitioner industry is an eligible consumer for availing such benefits.
- d) Being aggrieved by non-extension of the load factor rebate /special discount benefit to the unit of the Petitioner as per Para-204 of the RST order for FY 2022-23 and consequent revision of the bills of the Petitioner from April, 2022 to March, 2023, the Petitioner filed a petition before Learned GRF, Rourkela and vide order dated 19.09.2022 in Case No.553 of 2022, the prayer of the Petitioner was not accepted by the Learned GRF, Rourkela and on being aggrieved by the order of the Learned GRF, the Petitioner filed a representation before the Learned Ombudsman-II which was

registered as C.R. Case No.W-14 of 2022. Vide order dated 28.06.2023 Learned Ombudsman-II was pleased to pass the following order:

“1. The Respondent is directed to extend the Load Factor Rebate/Special Discount benefit to the unit of the petitioner as per Para-204 of the RST order for FY 2022-23 and revise the bills of the petitioner from April, 2022 to March, 2023 and serve to the petitioner within 15 days from the date of this order & file compliance of the above within 15 days thereafter before this Authority.

2. The present RST order for FY 2023-24 is not applicable to this petitioner.”

3. The Respondent-Licensee filed a review application on 05.08.2023 before the Learned Ombudsman-II invoking Section 114 read with Order-47 Rule-9 of the Code of Civil Procedure, 1908 seeking review of the order dated 28.06.2023 passed in C.R. Case No. W-14 of 2022 contending that the Petitioner industry is not entitled to get load factor rebate as per the RST order for the FY 2022-23 which is meant for the Steel Industry without CGP. After hearing the parties, the Learned Ombudsman-II vide order dated 10.11.2023 rejected the said review petition. Consequently, the Petitioner industry has filed the present petition for execution of the order dated 28.06.2023 passed by the Learned Ombudsman-II in C.R. Case No. OM(II) (W)-14 of 2022.
4. In reply, the Respondent-Licensee has submitted that the order dated 28.06.2023 passed by the Learned Ombudsman-II in C.R. Case No. OM(II) (W)-14 of 2022 without having jurisdiction on the subject matter is a nullity and the same is unenforceable in the eyes of law, inasmuch as the issue before the Learned Ombudsman-II was interpretation of the RST order dated 24.03.2022 and RST order dated 23.03.2023 passed by the Commission for the FY 2022-23 and FY 2023-24 respectively. The powers and functions of the Learned Ombudsman are governed under the provisions contained in OERC (GRF and Ombudsman) Regulations, 2004. The Commission has framed the said Regulations in exercise of power vested upon it under Section 181 of the Electricity Act, 2003. As per Clause (a) of Regulation 6 of the OERC (GRF and Ombudsman) Regulations, 2004, the matters which are subject matter of existing or proposed proceedings before this Commission or any other authority including under Part-X, XI, XII, XIV and XV of the Electricity Act, 2003 have been kept out of the scope of adjudication by the Learned Ombudsman.

In support of such submissions, the Authorized representative of the Respondent-Licensee has relied upon several judgments of the Hon'ble High Court and Hon'ble APTEL wherein it is held that the issue relating to clarification of applicability of tariff is not a billing dispute and the State Commission who has determined the tariff under Section 86 (1) (a) alone has the jurisdiction to give clarification for flawless applicability of the tariff provisions.

5. The main points of controversy that need to be addressed are stated hereafter.
 - i. Whether the order dated 28.06.2023 of the Learned Ombudsman-II in C.R. Case No.W-14 of 2022 is executable within the scope of Section 142 of the Electricity Act, 2003.
 - ii. Whether the Learned Ombudsman-II is vested with the jurisdiction to issue clarification on the point of applicability of the tariff order in respect of extension of certain benefit to a category of consumers.

For the sake of convenience, the above stated two points are taken up for simultaneous discussions as they are extricably connected with each other.

6. It is true that the Petition under Section 142 of the Electricity Act, 2003 has been filed by the Petitioner praying for implementation of the order No. 66 (2) dated 28.06.2023 pronounced by the Learned Ombudsman-II in C.R. Case No.OM-II (W)-14 of 2022. At this point, it is pertinent to state that Hon'ble APTEL in Appeal No. 34 of 2015 by order dated 5th February, 2016 has clarified the real proposition at Para-25 & 26 of the aforesaid judgment. The following observations have been rendered.

“25. The State Commission has decided to refer the above case of the Appellant to Redressal Forum and Ombudsman on the basic premise of the judgment of Hon'ble Supreme Court and the relevant portion of the same judgment has already been reproduced above. In our opinion, the present case of the Appellant is not that similar to the case which was under the consideration of the Hon'ble Supreme Court. In that case, the Consumer Grievance Redressal Forum and Ombudsman was already created by the Maharashtra Electricity Regulatory Commission and the issue was relating to Section 86(1)(f) of the Electricity Act, 2003 on the aspect of adjudication by the State Commission in respect of the individual consumer. The Hon'ble Supreme Court stated in the above judgment that the State Commission cannot adjudicate disputes relating to grievances of individual consumers if such Redressal Forum is already in existence and the issue was limited to the individual

grievances of the consumers. However, in the present case it is a distinct from the above in the manner that it is relating to only clarification of some of the provisions of the Tariff Order for the FY 2012-13 issued by the State Commission read in conjunction with Agreement dated 16.11.2013 executed between the Appellant and the Respondent No.1 and the limited issue before the State Commission was to issue the requisite clarification with respect to the implementation of the provisions contained in the Clause 13 of the Agreement executed between the parties.

26. Section 42(5) of the Electricity Act, 2003 states that every Distribution Licensee shall, establish a Forum for Redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission. We have already referred to State Commission's Notification dated 09.11.2011 and observed that nowhere any mention has been made about seeking clarification on the applicability of the relevant provisions contained in the Tariff Order issued by the State Commission needs to be referred to Ombudsman or "the Redressal Forum" as constituted under the law."

7. To further clarify the legal riddle, it has also been observed in the following languages as stated in Paragraph-28 of the aforesaid judgment of the Hon'ble APTEL.

"28. Even in another case involving Chhattisgarh State Power Holding Co. Ltd Vs. Lanco Amarkantak Power Pvt. Ltd in Appeal No. 176 of 2010, this Tribunal vide its judgment dated 15.03.2011 opined that the issue relating to clarification of applicability of tariff is not merely a billing dispute and the State Commission, which has determined the tariff under Section 86(1)(a) alone has the jurisdiction to give the clarification of correct applicability of the tariff provisions and in our opinion, the case in the present Appeal is similar one."

8. In view of the aforesaid authoritative observations, it is highly doubtful, if the Ombudsman is vested with the authority to interpret the Tariff orders issued by the Commission and to add or subtract the words for giving varied meaning to the tariff order already delivered by the Commission. Be it clarified that the Tariff order pronounced by this Commission is also a quasi-judicial order which is pronounced after hearing the parties as per the Act and Regulations.

9. With due consideration of the observations of the Hon'ble APTEL dated 05.02.2016 in Appeal No. 34 of 2015 as quoted above, it is found that the Ombudsman stands divested of the jurisdiction to further interpret the Tariff order and it is only the Regulatory Commission, which is vested with the authority under the Law to clarify or to interpret the Tariff order pronounced by it.
10. In view of the discussions as stated above, we do observe that the prayer of the Petitioner falls beyond the scope of Section 142 of the Electricity Act, 2003 and thus, the petition is not maintainable, on facts and law.
11. The case is accordingly disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson