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ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
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Case No. 68/2024

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

Date of Order: 21.12.2024

In the matter of: Corrigendum to the order dated 20.12.2024 in Case No.68 of 2024
AND
In the matter of: Application under Section 86 of the Electricity Act, 2003 read with Power Purchase Agreement dated 19.12.2012 executed with GRIDCO Limited seeking refund of the arbitrarily deducted penalty qua alleged short supply, and further seeking directions to GRIDCO Limited to make payment of capacity charges to the Petitioner-M/s. Vedanta Limited to the extent of the contracted capacity.
AND
In the matter of: M/s. Vedanta Limited Petitioner
Vrs.
GRIDCO Limited Respondent

CORRIGENDUM ORDER

1. Inadvertently, the following part from the order was omitted for the order dated 20.12.2024 passed in Case No.68 of 2024, which was uploaded in the official website of this Commission. Hence, the said part of the order be read as the opening stanza of the said order.

“For Petitioner: Mr. Ramji Srinivasan, Sr. Advocate along with Mr. Hemant Singh, Advocate & Shri Biswajit Sahoo, Dy. Manager

For Respondent: Shri Bijay Kumar Das, Sr.GM (PP) along with Ms. Susmita Mohanty, DGM (Elect.) & Shri Eeshan Sahoo, A.M (Elect.)”

2. An inadvertent clerical error has been noticed at Para-9 (d) of the said order dated 20.12.2024 passed in Case No.68 of 2024 mentioning it “in its tariff order dated 12.06.2013” in place of “in its order dated 22.06.2020”.

Accordingly, at Para-9 (d) of the said order, the words and figures “in its tariff order dated 12.06.2013” shall be read as “in its order dated 22.06.2020”.

3. All other terms of the order dated 20.12.2024 in Case No. 68 of 2024 shall remain unaltered.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson



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Present: Shri G. Mohapatra, Officiating Chairperson
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Case No. 68/2024

M/s. Vedanta Limited Petitioner
Vrs.
GRIDCO Limited Respondent

In the matter of: Application under Section 86 of the Electricity Act, 2003 read with Power Purchase Agreement dated 19.12.2012 executed with GRIDCO Limited seeking refund of the arbitrarily deducted penalty qua alleged short supply, and further seeking directions to GRIDCO Limited to make payment of capacity charges to the Petitioner-M/s. Vedanta Limited to the extent of the contracted capacity.

ORDER

Date of Hearing: 26.11.2024

Date of Order: 20.12.2024

The present order is occasioned due to the petition dated 10.09.2024 filed by the Petitioner-M/s. Vedanta Limited purportedly under Section 86 of the Electricity Act, 2003 read with the Power Purchase Agreement (PPA) dated 19.12.2012 seeking for the reliefs stated below”

- “a. Declare that for the purpose of recovery of capacity charges, the obligation of the Petitioner is limited to declaration of availability only on the basis of actual linkage coal, in terms of the FSA dated 27.08.2013, and that the Petitioner is entitled to recover full capacity charges in the event of such declaration of availability in terms of stated in the present petition;*
- b. Declare that the consequence of suspension of coal supply for the period between 29.03.2018 to 18.12.2019, owing to communication by GRIDCO dated 22.03.2018, cannot be to the account of the Petitioner and such the levy of penalty of Rs.290 Crores for such period by GRIDCO is wrongful.*
- c. Consequent to prayer (b), hold that the Petitioner is entitled to recovery of full capacity charges for the period 29.03.2018 to 18.12.2019;*
- d. Direct the Respondent No. 1 to refund the arbitrarily deducted penalty qua short supply for the period of April 2015 to March 2023 amounting to Rs.6,72,67,37,988 along with applicable interest/ carrying cost in terms of the Regulations and tariff orders passed by this Hon'ble Commission, calculated on compounding basis;*

- e. In the interim, direct GRIDCO not to impose any short supply penalty and/ or reduce capacity charges, if the Petitioner is declaring availability to the extent of linkage coal available in a situation where GRIDCO denies consent for procurement of alternate coal, as pleaded in the present petition, till the pendency of the present petition; and*
 - f. Pass any other orders or directions as this Hon'ble Commission may deem fit in the interest of justice."*
- 2. The Petitioner-M/s Vedanta Limited is engaged in manufacturing of Aluminum products and owns & operates 2400 MW (4x600 MW) coal fired thermal power plant at Jharsuguda, Odisha. Out of 4 units, Unit#2 (600 MW) is IPP unit dedicated to meet the State's entitlement of power from the said power plant and remaining Units #1,3&4 (3x600 MW) are CGP units. For State's entitlement of power, linkage coal/captive mines allocated to the Petitioner shall be used. Petitioner has executed Fuel Supply Agreement (FSA) dated 27.08.2013 with M/s Mahanadi Coal Field Ltd. (MCL), the only source of supply of linkage coal.
- 3. M/s Vedanta Ltd. has submitted the following contentions:
 - (a) That the obligation to supply power to the State/GRIDCO from the generating Unit #2 is limited to the extent of power generation from linkage coal supplied and at present the Annual Contracted Quantum (ACQ) of linkage coal supplied by MCL, under the FSA is 2.57 MMT which can generate only 340 – 350 MW of power (with slippage in grade of coal) on annual average basis. Hence, the capacity charges to the extent of 85% plant availability is not recovered and the petitioner has no other way of recovering the fixed charges.
 - (b) In case the Petitioner declares normative availability equal to 85% and is supplying power from Unit-II, the Petitioner is liable to recover entire capacity charges as its obligation to supply power to GRIDCO/State is to the extent of power generated from linkage coal supplied as per FSA (to be treated/considered as deemed normative availability).
 - (c) GRIDCO, vide a letter dated 09.03.2023 and 09.06.2023, gave consent for procurement additional coal for supply of power over and above what can be generated from linkage coal to meet supply obligation under PPA. M/s Vedanta participated in bidding for e-auction coal of OCPL/MCL for procuring coal for alternative sources required beyond 120% of monthly scheduled quantity of linkage coal. The consent was on the condition that cost of power including the auction shall not be more than the benchmark cost of State Thermal Power Plant i.e. Rs.3.45/unit.

GRIDCO had denied consent for procurement of alternate coal by Vedanta for the earlier period i.e. June 2020 – February 2023.

- (d) The power being supplied by the Petitioner towards its supply obligation is first being adjusted towards the variable component of 5% by GRIDCO, and the remaining is being adjusted towards 25% of the total energy sent out from Unit 2. Since, Vedanta can only supply power to the extent generated from linkage coal, as such, the quantum of power remaining after adjusting 5% ought to be treated as the deemed normative availability for the purpose of the recovery of fixed cost.
 - (e) All thermal generating stations can declare normative availability irrespective of the fact that the same is scheduled or not. Further, anything less than normative availability, the same will result in reduction of capacity charges, as evident from the formula provided. This would mean that though generators' entire installed/contracted capacity is for the Distribution Licensee, however, generator is entitled to recover entire capacity charges qua the installed/contracted capacity, on declaration of normative availability.
 - (f) GRIDCO is liable to pay capacity charges to the Petitioner to the extent of normative availability qua contracted capacity.
 - (g) GRIDCO not only declined procurement of alternate coal, but also levied short supply compensation on petitioner. M/s Vedanta Ltd. has stated that shortfall in supply to GRIDCO during July 2017 to January 2018 was due to ash pond breach, which is a force majeure event and various technical faults in Unit-2.
4. In so far as the reliefs claimed regarding its entitlement to recover Full Capacity Charges for the period from 29.03.2018 to 18.12.2019 from the Respondent – GRIDCO Limited, it is the case of the Petitioner that in absence of Linkage Coal supplied during the said period on account of suspension of supply of coal by M/s. MCL, on the basis of Letters issued by the Respondent-GRIDCO, the supply of power having been hindered, the same cannot be treated as default on the part of the Petitioner-M/s. Vedanta and accordingly, Full Capacity Charges for the said period has to be recovered by the Petitioner – M/s Vedanta Ltd.
5. The Petitioner has also alleged that the penalty qua short supply deducted by M/s. GRIDCO Ltd. for the period from 2015 to March 2018 being arbitrary in nature, the said amount is liable to be refunded to the Petitioner in terms of the Regulations and Tariff Orders passed by this Commission.

6. While resisting the averments of the Petitioner-M/s. Vedanta Limited, the Respondent-M/s. GRIDCO Limited has sought for the dismissal of the Case as not maintainable on the ground that the question raised by the Petitioner-M/s. Vedanta Limited has already been adjudicated by this Commission on several occasions, pursuant to repeated Applications filed earlier by the Petitioner-M/s. Vedanta Limited.
7. In specific, M/s. GRIDCO Limited has made a reference to the Case No. 14 of 2023 filed by the present Petitioner and the order dated 29.08.2023 passed by this Commission in the said case. The present Petitioner vide the said Case / Application had made the prayer as follows:

- “a) Direct GRIDCO to allow the Petitioner to procure additional coal from alternate sources in order to enable the said Petitioner to generate and supply power to GRIDCO as per the terms of the PPA, and further direct GRIDCO to make payment of capacity charges to the extent of 600 MW and also make payment of excess landed cost incurred towards such procurement of additional coal as part of energy charges to the Petitioner: or*
Direct GRIDCO to make payment of capacity charges to the petitioner to the extent of 600 MW irrespective of the actual power being supplied to the extent of linkage coal being supplied by MCL under FSA dated 27.08.2013;
- b) Direct GRIDCO to make payment of excess landed cost incurred on account of change in law events in terms of MOP notifications dated 08.10.2021 & 09.01.2023, as detailed in the present petition, as part of energy charges to the Petitioner;*
- c) In the interim, direct GRIDCO not to impose any short supply penalty in the event the Petitioner is supplying power to the extent of linkage coal made available by MCL in terms of FSA dated 27.08.2013, till the adjudication of the present Petition; and*
- d) Pass any other orders or directions as this Hon’ble Commission may deem fit in the interest of justice.”*

8. On having heard both the sides then and keeping in view the submissions of the Petitioner- M/S. Vedanta Limited, this Commission had dismissed the Case No. 14 of 2023 as withdrawn with a specific direction to the Petitioner-M/s.Vedanta Ltd. to supply State share of power to the Respondent-M/s. GRIDCO Limited regularly as per the PPA dated 19.12.2012 and any deviation would be viewed seriously.

According to the Respondent-M/s. GRIDCO Limited, the prayer made by M/s. Vedanta Limited, vide the present Application, is nothing but a repetition of the prayer earlier made, vide Case No.14 of 2023, and the same is liable to be dismissed as not maintainable at the threshold.

9. Further, Respondent-M/s. GRIDCO Ltd. in its reply/counter questioned the maintainability of the proceeding with contentions as stated hereunder:

- (a) Vedanta has no intention of supplying power to the State in spite of all kinds of support/cooperation extended to it by GRIDCO and State Government in order to overcome all kinds of difficulties placed from time to time. It is to mention that, first Vedanta had allegedly raised issue of short supply of Linkage Coal by MCL and Grade slippage in spite of the fact that, Vedanta surrendered Linkage Coal for supply of 5% of Energy Sent Out (ESO) without intimating either GRIDCO or Department of Energy, Govt. of Odisha and concealed the fact in different proceedings before Hon'ble Commission till March, 2020. Also Vedanta did not lift minimum quantum of Annual Contracted Quantity (ACQ) of Linkage Coal during FY 2018-19 and unnecessarily created the situation of termination of Fuel Supply Agreement (FSA) by MCL. Since COD of IPP Unit#2 (600 MW) in November 2010, M/s Vedanta has not supplied full entitlement of power to the State/GRIDCO citing some plea or the other.
- (b) The Petitioner's contention that obligation of Vedanta to supply power to GRIDCO is limited to the extent of linkage coal, and the same is to be treated as deemed normative availability for the purpose of recovering capacity charge is entirely unjustified & misleading and may not be considered by the Commission.
- (c) Vedanta availed concessional linkage coal under the FSA for Unit#2 from MCL during entire period of the FY 2017-18, but did not supply State's entitlement of power during FY 2017-18 and utilized the same for generating power from its converted CGP units (Unit #1,3&4) for its own captive consumption and thereafter short lifted linkage coal during FY 2018-19 which was brought to notice of the Commission in Case No.68 of 2018.
- (d) The Commission in its tariff order dated 12.06.2013 observed that M/s Vedanta has stated that under-utilization of coal during the FY 2017-18 was on account of the breach of ash pond and stoppage of operation of Unit 2&3.
- (e) GRIDCO has submitted following extracts of some of the orders issued by the Commission regarding supply of State's share of power.
- (i) In order dated 03.05.2023, in Case No.129 of 2021 the Commission has reaffirmed the order of the Commission dated 27.01.2016 in Case No.21 of 2015 including the entitlement of GRIDCO under the subsisting PPA dated 19.12.2012 which is reproduced below:
- “35(b) Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7%/5% (at variable cost) of total energy sent out from

the power station (4x600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.

(c) Unit-I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission.”

(ii) The Para 15 of the Commission’s order dated 08.02.2023 in Case No.62 of 2019, is reproduced below:

15. Further, M/s Vedanta Ltd. is directed to supply State entitlement of power to GRIDCO as per the existing PPA and subsequent orders of the Commission. M/s Vedanta Ltd. shall honour the provisions of PPA in letter & spirit in respect of supply of State entitlement of power from its 4x600 MW thermal power plant and shall not escape from its obligations to supply State entitlement of power deliberately and purposefully, under the plea of paying compensation to GRIDCO for short supply of power”.

(f) As per CIL notification dated 14.02.2023, the Petitioner can opt for additional 20% of linkage coal over & above the current ACQ of 25.7 lakh tonnes i.e. 30.84 lakh tonnes. Moreover, if there is any grade slippage in coal, which is attributed to MCL, then it would be duly compensated by MCL through issuance of credit notes as per FSA.

(g) Based on request of M/s Vedanta, vide letter dated 27.02.2023 & 01.03.2023, GRIDCO, vide letters dated 09.03.2023 & 09.06.2023, have issued conditional consent for procurement of e-auction/commercially cheaper coal from OCPL or MCL. But, the Petitioner did not acted upon to arrange commercially cheaper coal for supply of full entitlement of power of GRIDCO/the State.

10. Having heard the parties through hybrid mode and considering the materials available on record, the Commission finds merit in the contention of M/s. GRIDCO Ltd. inasmuch as the reliefs now sought for by the Petitioner appears to be substantially the same as was made in Case No. 14 of 2023 though articulated in different words.

11. It is further pertinent to mention here that vide the order dated 22.06.2020 passed in Case No. 68 of 2018 filed by M/s. GRIDCO Limited, this Commission had decided the

methodology for recovery of compensation in case of non-supply / short supply of power by M/s. Vedanta Limited to M/s. GRIDCO Limited. The said order has been challenged by M/s. Vedanta Limited before the Hon'ble APTEL registered as Appeal No. 107 of 2021 and the same is pending for adjudication without grant of any stay on recovery of compensation by M/s. GRIDCO Limited for non-supply / short supply of power by M/s. Vedanta Limited. M/s. GRIDCO also had filed a Review Petition registered as Case No. 51 of 2020 before this Commission for review of the order dated 22.06.2020 and the same have been dismissed by this Commission. Thereafter, M/s. GRIDCO Limited has approached the Hon'ble APTEL vide Appeal No. 312 of 2022 and same is still sub-judice.

12. The Application filed by M/s. Vedanta Limited vide Case No. 34 of 2018 seeking for declaration of IPP Unit -II as CGP unit was disposed of by this Commission vide order dated 05.10.2021 and pursuant to the review petition registered as Case No. 129 of 2021 filed by M/s. GRIDCO Limited, this Commission, vide its order dated 28.10.2022, had directed for re-hearing of the same. In compliance with the order dated 13.01.2023 passed by the Hon'ble APTEL in Appeal No. 437 of 2022 filed by M/s. Vedanta Limited, this Commission re-heard the Case No. 129 of 2021 and the order was passed on 03.05.2023 by this Commission with the observation that the direction issued, vide the order dated 05.10.2021, declaring Unit-II shall normally operate as CGP and the consequential directions are found to be patently and self evidently erroneous. The Commission also directed both the parties to abide by the order dated 27.01.2016 passed in Case No. 21 of 2015. M/s. Vedanta Limited has challenged the order dated 03.05.2023 passed in Case No. 129 of 2021 by this Commission before the Hon'ble APTEL vide the Appeal No. 509 of 2023 and the same is sub-judice.

It is to reiterate that Case No. 14 of 2023 filed by M/s. Vedanta Limited has been dismissed as withdrawn and the Commission has directed M/s. Vedanta Limited to supply State share of power to GRIDCO regularly as per the PPA dated 19.12.2012 and any deviation would be viewed seriously.

13. With regard to the prayer of the Petitioner-M/s. Vedanta Limited at aforesaid Para-1(b), it is observed from the letter dated 23.03.2018 of GRIDCO that GRIDCO had intimated M/s. MCL regarding supply of State entitlement of power by M/s. Vedanta Ltd. against the supply of linkage coal by MCL for the FY 2017-18. This letter of GRIDCO is in response to the letter No.2428 dated 07.02.2018 of M/s. MCL. In the letter dated 22.03.2018 of GRIDCO, we do not find that GRIDCO had asked M/s. MCL to stop the supply of linkage coal to M/s. Vedanta Ltd. Further, this matter was discussed in the order

dated 08.02.2023 of this Commission passed in Case No.62 of 2019, wherein, the Commission had observed as under:

“13. x x x x x x x x

iv. *As per submission of MCL, coal supply to M/s. Vedanta Ltd. was kept in abeyance by MCL from 29.03.2018 to November, 2019 to prevent mis-utilisation of linkage coal on account of short lifting of coal by M/s. Vedanta Ltd. and otherwise, there was no shortage of coal supply. The supply of linkage coal has been resumed by M/s. MCL from December, 2019.”*

14. Further, in the context of the short supply of power by M/s. Vedanta Ltd. for FY 2017-18 & FY 2018-19, the views of GRIDCO, the views of M/s. Vedanta Ltd. and the observations of the Commission at Para-10 (g) of the order dated 22.06.2020 passed in Case No.68 of 2018 are as follows:

“10(g). **Opportunity loss of GRIDCO due to short supply of power by M/s. Vedanta**

GRIDCO Views

- *The Commission in ARR order of GRIDCO for FY 2017-18 and FY 2018-19 has allowed to generate revenue for repayment of loan principal and reduce the past losses by trading the available surplus power. This opportunity of GRIDCO has been lost due to non-supply / short supply of power by M/s Vedanta Ltd. Therefore, this aspect of opportunity loss of GRIDCO may be addressed as well.*

Vedanta Views

- *M/s. Vedanta Ltd. submitted that the Indian Contract Act, 1872 read with the law on damages settled by the courts of the country, clearly hold that only direct losses are reimbursable. No claim can lie for any indirect cost / opportunity loss. GRIDCO has anyway purchased the shortfall quantum from other sources and is charging the additional cost to Vedanta. In effect, GRIDCO was at the same position in terms of total power available to it and hence no case of claim of any loss from imaginary trading of power can be entertained.*

Commission's Observation:

- *The Commission observed that since M/s. Vedanta Limited has agreed to compensate GRIDCO for its actual loss/damages due to short supply of power the opportunity loss as claimed by GRIDCO, which is very difficult to quantify, should not form part of the PPA. However, GRIDCO has the liberty to file separate petition before the Commission, when GRIDCO is genuinely affected and the opportunity loss it claims is quantified.”*

15. In view of the above, we observe that Para 1(b) of the prayer of the Petitioner-M/s. Vedanta Ltd., in the present case, has already been addressed in the orders of the Commission passed in Case No.68 of 2018 & Case No.62 of 2019 and the matter of compensation/penalty has been discussed vide order dated 22.06.2020 passed in Case No.68 of 2018 and the said order has been challenged before the Hon'ble APTEL by M/s. Vedanta Ltd. in Appeal No.107 of 2022 and also by M/s. GRIDCO Ltd. in Appeal No.312 of 2022 and now both the appeals are pending before the Hon'ble APTEL for adjudication.

16. It is observed that M/s. Vedanta Ltd., vide Para 1(c) of its prayer, in the present petition, has raised recovery of Full Capacity charges for the aforesaid period from 29.03.2018 to 18.12.2019, when the linkage coal supply was suspended by M/s. MCL. We find that the issue of Annual Fixed charge/Capacity charges calculation has been deliberated at Para-10 (c) of the order dated 22.06.2020 passed in Case No.68 of 2018, which has been challenged by both the parties before the Hon'ble APTEL as stated above and the same is under sub-judice.

17. It is to be mentioned here that as per the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014, the computation of Capacity charges depends on the Plant Availability Factor, which is defined as under:

*“Plant Availability Factor “(PAF)” in relation to a generating station for any period means the average of the daily **declared capacities** (DCs) for all the days during that period expressed as a percentage of the installed capacity in MW reduced by the normative auxiliary energy consumption.”*

Further, the computation of Plant Availability Factor depends upon the daily declared capacity, which has been defined in the said Regulations as under:

*“Declared Capacity or “DC” in relation to a generating station means, the capability to deliver ex-bus electricity in MW declared by such generating station in relation to any time-block of the day or whole of the day, **duly taking into account the availability of fuel or water**, and subject to further qualification in the relevant regulation”*

18. We further observed that the available capacity is to be declared by the Generating Station duly taking into account the availability of fuel or water. In the instant case, the declaration of capacity by the Petitioner M/s. Vedanta Limited is to be declared duly taking into account the availability of fuel (coal). According to the Petitioner M/s. Vedanta Limited, for the period from 29.03.2018 to 18.12.2019, the linkage coal supply was suspended by M/s. MCL and thus, it could not supply State entitlement of power to GRIDCO. But it claims the recovery of Full Capacity charge for the said period where the available capacity is to be declared by the Generator, duly taking into account the availability of fuel (coal).

19. As per notification of CIL, the Petitioner can avail the additional 20% linkage coal over & above the ACQ and grade slippage attributable to MCL, would be compensated by MCL. GRIDCO has also given its consent for procurement of e-auction/commercially cheaper coal. Hence, there is ample scope for enhancement of quantity of linkage coal/procurement of coal from alternative sources on annual basis to supply State's/GRIDCO's entitlement of power.

20. From the factual scenario as indicated above, the Commission is constrained to observe that the Petitioner M/s. Vedanta Limited has multiplied the proceedings relating to same issues in different forms, although the same has been sufficiently deliberated upon time and again. It is no more open for this Commission to go beyond the order dated 27.01.2016 passed in Case No. 21 of 2015 and equally, it is not legally permissible for either side to act contrary to the PPA dated 19.12.2012.
21. It may also be mentioned here that the orders passed by this Commission in earlier proceedings touching the issues raised by M/s. Vedanta Limited vide the present application hold the field unless the same is interfered with or varied by the Appellate / higher forums.
22. In the facts and circumstances narrated above, the present Petition of M/s. Vedanta Limited is hit by the principle of res-judicata as enunciated in Section 11 of the Code of the Civil Procedure, 1908.
23. Hence, the present case of M/s. Vedanta Limited is dismissed as not maintainable.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson