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ODISHA ELECTRICITY REGULATORY COMMISSION
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Present: Shri G. Mohapatra, Officiating Chairperson
Shri S. K. Ray Mohapatra, Member

Case No. 77/2024

M/s. SN Oxygen (P) Ltd Petitioner
Vrs.
The Executive Engineer (Electrical),
AED, Athagarh, Cuttack. Respondent

In the matter of: Application under Section 142 of the Electricity Act, 2003 alleging non-compliance of order dated 29.10.2020 of the Learned GRF, Cuttack passed in C.C. Case No.402 of 2020 and also order dated 26.07.2021 of the learned Ombudsman-I passed in C.R. Case No.74 of 2021.

ORDER

Date of Hearing: 26.11.2024

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This matter has been taken up for hearing through hybrid arrangement.

2. Shri Pabitra Mohan Sahu, the Executive Engineer (Electrical), AED, Athagarh, Cuttack, the Respondent-Licensee does appear. None appears on behalf of the Petitioner- M/s. SN Oxygen (P) Ltd.
3. The present petition has been filed by the Petitioner-M/s. S. N. Oxygen Pvt. Ltd. with the prayer to direct the Respondent-Licensee to comply with the order dated 29.10.2020 of the GRF, Cuttack passed in C.C Case No.402 of 2020 and also the order dated 26.07.2021 of the Learned Ombudsman-I passed in C.R. Case No.74 of 2021.
4. Respondent-the Executive Engineer (Elect.), AED, Athagarh has submitted that being aggrieved by the aforesaid orders of both the Learned GRF, Cuttack and the Learned Ombudsman-I, they had filed a writ petition before the Hon'ble High Court of Orissa registered as W. P. (C) No.36003 of 2021. The Hon'ble High Court of Orissa, vide their order dated 17.03.2023, had dismissed the said writ petition with the following observations:

“2. x x x x x, Mr. Maharana, learned counsel appearing for the opposite party no 1 through page-51 of the writ petition brings to the notice of the Court that while bringing the writ petition on the Board of this Court on 15.11,2021, the Petitioner has already made an attempt for review by filing the application before the G.R.F., the Original Authority involving C.C. No.402 of 2020 appearing at Annexure-11. From Pleading at paragraph-19 of the writ petition, this Court finds as follows:

“19. That the petitioner vide his letter dt. 06.11.2021, copy filed herewith as Annexure-10 has written to the GRF, Cuttack seeking clarification/modification & correction of the order dt. 29.10.2020 as passed in Case No.402 of 2020 in consonance` with Regulation-16 of OERC Supply Code, 2004 which is also pending consideration.”

3.Undisputedly there is pendency of the review attempt of the petitioner before the G.R.F. It is at this stage, there is no scope for the petitioner to pursue the writ remedy. In the circumstance, this Court finds the petitioner is not permitted to avail both the forums inasmuch as attempting by way of review to the G.R.F. order and also involving a challenge to the G.R.F. order in the pendency of the review application in the High Court.

4. As a result, this Court finds the writ petition is not entertainable at this point of time. The writ petition thus dismissed, as not entertainable. Petitioner is at liberty to pursue his review remedy provided the same is not lawfully disposed of in the meantime.”

(Note: In the instant case, the Petitioner mentioned above is the Licensee)

5. The Respondent-Licensee has further submitted that in view of the above observations of the Hon'ble High Court of Orissa, the Learned GRF, Cuttack was requested, vide their communication dated 06.11.2021, for modification/clarification and correction of the aforesaid order dated 29.10.2020 of the Learned GRF, Cuttack which is still pending before the Learned GRF, Cuttack.

Further the Respondent-Licensee has pursued his earlier review remedy pending before the Learned GRF, Cuttack vide letter dated 02.08.2023, which is also still pending for disposal. Therefore, the Respondent-Licensee has prayed before the Commission to direct the Learned GRF, Cuttack to dispose of the said Review petition which is pending at their end and to drop the present case filed under Section 142 of the Electricity Act, 2003, inasmuch as the question of compliance of the aforesaid orders of the Learned GRF, Cuttack and Learned Ombudsman-I do not arise at this stage.

6. Upon hearing the parties, we observe that the Petitioner had filed a petition before this Commission which was registered in Case No.48 of 2023 with the same prayer and the Commission, vide its order dated 18.07.2023 passed in Case No.48 of 2023, had disposed of the matter with the following observations:

“5. As it appears in the above referred Writ Petition, the Hon'ble High Court has been pleased to direct the Petitioner to pursue review remedy before the GRF, Cuttack, the question of compliance of the order of GRF as well as Ombudsman-I does not arise at this stage and accordingly, the petition is dismissed as not maintainable.

6. With the above observation, the case is disposed of.”

7. We reiterate the above observations of the Commission passed earlier in Case No.48 of 2023, as there is no change in the circumstances till date pertaining to the case at hand.

However, we direct the Learned GRF, Cuttack to take up the matter in C.C. Case No.402 of 2020 in view of the observations of the Hon'ble High Court of Orissa in their order dated 17.03.2023 passed in W.P. (C) No.36003 of 2021 basing upon the Application of the Respondent-Licensee. Hence, both the parties, the Respondent-Licensee and the Petitioner- M/s. SN Oxygen (P) Ltd. are directed to approach the Learned GRF, Cuttack within a week hence for further instruction.

8. The Registry is directed to send a copy of this order to the Learned GRF, Cuttack forthwith for necessary action at their end.
9. With the above observations and directions, the case is disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson