

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No. 159/09**

**Dated: 22<sup>nd</sup> February, 2011**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,**  
**Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of**

**Southern Electricity Supply Company**  
**Of Orissa (SOUTHCO) Limited**  
**Courtpeta, Berhampur**  
**Distt. Ganjam, Orissa**

**... Appellant(s)**

**Versus**

**1 .Orissa Electricity Regulatory Commission**  
**Vidyut Niyamak Bhawan**  
**Unit-VIII, Bhubaneswar**  
**Orissa**

**2. Orissa Hydro Power Corporation**  
**Orissa State Police Housing & Welfare**  
**Corporation Building, Vani Vihar Chown**  
**Janpath, Bhubaneswar-22**

**3. Corporation of India (GRIDCO)**  
**Janpath, Bhubaneswar,**  
**Orissa**

**Respondent(s)**

**Counsel for Appellant**      **Mr. Suresh Tripathy**  
   **Mr. B. Bahera**

**Counsel for Respondent**    **Mr. R.K. Mehta**  
   **Mr. Antaryami**  
   **Mr. Lakhi Singh**  
   **Mr. M.G. Ramachandran**  
   **Mr. Sibashish Misra**  
   **Mr. Rutwik Panda**  
   **Mr. Siddharth**  
   **Mr. Antrayami Upadhyay**  
   **Mr. Athouba Khadim**

### **JUDGMENT**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,**  
**CHAIRPERSON**

1. Southern Electricity Supply Company of Orissa (SOUTHCO) is the Appellant. Orissa Electricity Regulatory Commission (State Commission) is the 1<sup>st</sup> Respondent. Orissa Hydro Power Corporation Limited (OHPC) is the 2<sup>nd</sup> Respondent. Grid Corporation of Orissa Limited (GRIDCO) is the 3<sup>rd</sup> Respondent.

2. The Appellant challenging the order dated 01.11.2008 passed by the State Commission rejecting the prayer made by the Appellant before the State Commission to give directions to the Orissa Hydro Power Corporation to accept the energy bills for the disputed period, has filed the present Appeal.

3. The relevant facts that are required for the disposal of this Appeal are as follows:

4. On 01.04.1999, the Appellant being a Distribution Company, was formed as per the Orissa Electricity Reform (Transfer of Undertaking, Assets, Liability, Proceedings and Personnel of GRIDCO to Distribution Companies) Rules, 1998. As per the license of the Appellant, the distribution and retail supply of electricity in the southern zone in the State of Orissa became its responsibility. Prior to this arrangement, GRIDCO, the 3<sup>rd</sup> Respondent was vested with

the responsibility of transmission and distribution. It continued its functions from April 1996 to March 1999.

5. The Hydro Power Corporation the 2<sup>nd</sup> Respondent is a company charged with the responsibility of hydro generation and the hydro stations that it runs in different places including Balimela, etc. Orissa has a single buyer model namely GRIDCO which acts as a medium to receive the power produced by the Hydro Power Corporation for onward sale to the Distribution Companies including the Appellant.

6. The Appellant, the Distribution Company, came into existence from 01.04.1999 as a successor of GRIDCO taking from GRIDCO the responsibility of the distribution and retail supply of electricity in the areas of supply where Balimela station was located. From then onwards, the Appellant raised energy bills to Power Corporation Colony

at Balimela based on the meter readings of 2 Nos. of 11 KV feeders supplied to Power House Colony belonging to the Hydro Power Corporation.

7. Just a few months before the privatisation on 24.12.1998 an agreement was entered into between OHPC and GRIDCO wherein it was decided that Balimela Colony Power House House consumption shall be computed on net exchange basis. GRIDCO continued to bill and collect the energy charges till 31.03.1999. Till 2000, as per the agreed practice, the Appellant was making payment of monthly Bulk Supply Tariff bills to GRIDCO after deducting the amount corresponding to aggregate monthly energy bills issued to Hydro Power Corporation consumers, namely GP-2 and other GPs.

8. In the year 2000 GRIDCO suddenly discontinued the agreed practice of adjustment of monthly energy

consumption bills of the Hydro Power Corporation Colony from its monthly Bulk Supply Tariff bills by stating that energy charges bills of OHPC station will be adjusted against the Bulk Supply Tariff (BST) from July 2000 onwards and the same may be collected by the Appellant from OHPC. As regards bills upto June 2000 the same will be adjusted against the BST subject to reconciliation by GRIDCO.

9. Thereafter, GRIDCO made adjustments against the Bulk Supply Tariff bills to the tune of Rs. 3.14 crores and Rs. 37.97 crores respectively for Upper Kolab and Upper Indravati Hydro Power Stations. However, in respect of Power Corporation Colony at Balimela, the OHPC refused to certify certain bills. Accordingly, GRIDCO refused to accept these bills of OHPC Colony on the plea that the certification by the OHPC was necessary. The result is the arrears of electricity charges amounting to several crores

against the consumption of OHPC Colony from 01.04.1999 to 07.06.05 (disputed period) remained unadjusted in the books of the Appellant, SOUTHCO. The matter was deliberated upon on several occasions between the SOUTHCO and OHPC, besides GRIDCO. There was no fruitful result.

10 Therefore on 08.07.2008, the Appellant SOUTHCO filed a petition in case No. 40/08 before the State Commission praying that direction be issued to the OHPC (R-2) to accept the energy bills for the disputed period and that GRIDCO be directed to accept the amount of GP-2 consumers as non-cash adjustment in the Bulk Supply Tariff bill of GRIDCO on monthly basis.

11. The State Commission passed the impugned order on 01.11.2008 dismissing the petition filed by the Appellant holding that the supply of electricity to the township

housing operative staff of generating is to be treated as a part of the generating activities and thereby rejected the prayer made by the Appellant. Challenging the same, the Appellant filed a Review before the State Commission on 11.12.2008. However, the State Commission dismissed the Review Petition by the order dated 27.06.2009.

12. Aggrieved by the same, the present Appeal has been filed against the impugned order dated 01.11.2008 confirmed by the Review Order dated 27.06.2009.

13. The main ground urged by the Learned Counsel for the Appellant is that the State Commission failed to appreciate that the Appellant being a Distribution Licensee over the area, the Appellant alone was competent to supply energy to the OHPC/R-2 colony and therefore the supply of electricity to end users in the Power House Colony of Balimela should be considered as supply from the

Appellant, though the supply is from the Orissa Hydro Corporation network. On the other hand, it is stated by the Learned Counsel for the Respondents, in reply that during the relevant time i.e. from the year 1999 to the year 2005 (disputed period), the Appellant did not have any Distribution System of its own for supply electricity to the Power House Colony of OHPC and in the absence of the Distribution network, the end users namely the Power House Colony cannot be treated as a consumer of the Distribution Licensee and consequently the question of the SOUTHCO raising the bills for them does not arise.

14. In the light of the above rival contentions, the following questions will arise for consider by this Tribunal:

- (i) Whether the Orissa Hydro Power Corporation as a generator was authorised to supply energy to its colony, even though the Distribution Licensee, duly

armed with the licence has a right to supply over the area of its operation?

(ii) Whether the decision in the impugned order dated 01.11.2008 taken by the State Commission holding against the Appellant, in regard to its claim for treating the supply of power to the Power House Colony of Balimela, as supply from the SOUTHCO is correct?

15. Let us now consider these issues.

16. The Learned Counsel for the Appellant has raised the following contentions:

(i) The Appellant, being a Distribution Licensee over the area, is alone competent to supply energy to the Power House Colony of the

Corporation. Therefore, the Appellant has got the legal authority to bill the OHPC/R-2 for such consumption.

- (ii) Prior to the Notification of the Government dated 08.06.2005, Hydro Power Corporation cannot lay claim supply of energy to its colony, since the Power Corporation had neither the legal sanction to distribute power nor had obtained permission.
- (iii) The State Commission overlooked the fact that Minutes of the Meeting dated 24.12.1998 was of no consequence, being contrary to the arrangements, i.e. Appellant alone was competent to supply energy in its area.

17. While dealing with these points, it would be proper to quote relevant provisions of the Electricity Act, 2003 for better appreciation, as extracted below:

.....

2(17) *“Distribution Licensee” means a licensee authorized to operate and maintain a distribution system for supply electricity to the consumers in his area of supply.*

2(19) *“Distribution System” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.”*

18. Definition of the Distribution Licensee and Distribution System would indicate that the Distribution Licensee is authorised to maintain the Distribution System through the wires and associated facilities between the delivery points and the point of connection to the installation of consumers.

19. The definition of generating company and generating station are given in Sections 2(28) and 2(30), reproduced below:

*“2.(28) “Generating Company” means any company or body corporate or association or body of individuals, whether incorporated or not or artificial judicial person, which owns or operates or maintains a generating station.*

.....

*2(30) “Generating Station” or “station” means any station for generating electricity, including any building and plant with step up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof, a site intended to be used for a generating station and any building used for housing the operating staff of a generating station and where electricity is generated by*

*water-power, includes penstocks, head and tail works, main and regulating reserves, dams and other hydraulic works but does not in any case include any sub-station.*

20. These definitions would reveal that the ‘Generating Company’ means any company or association of body of individuals owning a generating station, whereas ‘Generating Station’ means any station for generating electricity including any building and plant with other equipments which are to be used for Generating Station, but this does not include any sub-station.

21. Section 7 of the Electricity Act, 2003, reads as under:

*“7. Generating company and requirement for setting up of generating station: Any generating company may establish, operate and maintain a generating station without obtaining a license under*

*this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of Section 73.”*

22. As per this Section, any Generating Company may set up a generating station without obtaining a license, subject to the fulfilment of the requirement relating to the technical standards.

23. Let us now quote section 14 of the Electricity Act, 2003, as below:

*“14. Grant of License: The Appropriate Commission may, on an application made to it under Section 15, grant a license to any person –*

- (a) to transmit electricity as a transmission licensee, or*
- (b) to distribute electricity as a distribution licensee, or*

- (c) *to undertake trading in electricity as an electricity trader, in any area as may be specified in the license.*

*Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the license, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule in respect of such license shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business.*

*Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act.*

*Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a license under this Act”.*

24. This provision deals with the powers of the Commission to grant license to the person for transmission of electricity, distribution of electricity and to undertake trading in electricity if the specified conditions are fulfilled.

25. Let us now refer to Rule 4 which defines Distribution System. Rule 4 reads as under:

*“4. Distribution System – The distribution system of a distribution licensee in terms of sub-section (19) of Section 2 of the Act shall also include electric line sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines or use incidentally for the purpose of transmitting electricity for others.”*

26. As indicated above, the term “Generating Station” is defined in Sub-Section 2(30) as any station for generating electricity including any building used for housing the

operating staff of the generating station. This provision thus alienates the distribution licensee to claim its right over such distribution especially when the electric line, Sub-Station and electrical plant is not maintained by the licensee for the purpose of distribution of electricity in the area of supply in terms of Rule 4 of the Electricity Rules, 2005. Similarly Section 2(17) defines a Distribution Licensee to mean a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers of his area.

27. A reading of the above provisions would amply make it clear that the contention of the Appellant that it being a Distribution Licensee over the area was alone competent to supply the energy to the Power House Colony and accordingly billed the R-2 for such consumption is without any basis.

28. That apart, the Ministry of Power, Government of India, on the strength of the above provisions, issued an order called Electricity (Removal of Difficulties) (Fourth) Order 2005. This order was passed in conformity with the Electricity Act, 2003 and is in the nature of clarification to be followed from the date of the aforesaid order. The relevant portion of the said order reads as follows:

*“2. Supply of electricity by the generating companies to the housing colonies of its operating staff*

*The supply of electricity by a generating company to the housing colonies of, or townships housing the operating staff of its generating station will be deemed to be an integral part of the activity of generating electricity and the generating company shall not be required to obtain license under this Act for such supply of electricity.”*

29. With the coming into existence of the Appellant on 01.04.1999, the Appellant company raised energy bills on the R-2 Power Corporation, based on the meter readings of 2 Nos. of 11 KV feeders supplied to the Power House Colony which is admittedly operated and maintained by the R-2 Power Corporation. The OHPC, the generating company/R-2 has not admittedly billed the aforesaid energy to the GRIDCO, the trading company/R-3. Similarly, the GRIDCO/R-3 in turn did not bill the aforesaid power to the Appellant.

30. There were discussions during the meetings held on different dates, i.e. 06.07.2004, 30.05.2005, 22.05.2006 and 05.09.2006 participated by the Appellant Company, the Respondent and the State Commission. However, minutes of the meeting held on 05.09.2006 was not signed by the Appellant company. The Appellant company wrote a letter to the R-2 Corporation stating that the some of the

contents of the minutes of the meeting of 05.09.2006 were not acceptable as the Corporation was silent over the colony consumption for the period from April 1999 to June 2005. The R-2 Corporation sent a reply on 30.05.2007 stating that the proposal of the Appellant company is not acceptable and the minutes of the meeting of 05.09.2006 be accepted.

31. It is noticed that the distribution and retail supply licensee of the Appellant has been granted under the provisions of the Orissa Electricity Reform Act, 1999. From that time onwards, the Power House of the local distribution system is under the control of the R-2 Corporation, as the power was being fed to this local system namely Power House Colony through 2 Nos. of 11 KV feeders emerging from the Power House auxiliary system.

32. Taking into consideration of all these things, the State Commission rejected the prayer made by the Appellant/Petitioner in the impugned order giving various valid reasons. Those observations of the State Commission, that are relevant, are quoted below:

*“14. The OHPC has relied on the Govt. of India Notification dated 08.05.2005 titled as Electricity(Removal of Difficulty) (Fourth) Order 2005 regarding supply of electricity by the generating companies to the housing colonies of its operating staff.*

*“The supply of electricity by a generating company to the housing colonies of or townships housing operating staff of its generating station will be deemed to be an integral part of its activity of generating electricity and the generating company shall not be required to obtain license under this Act for such supply of electricity.”*

15. According to the Electricity Rule, a generating company shall not be required to obtain license under the Act for such implying that they have rights and obligations as a business for supply of power. The supply of electricity to the township housing the operating staff of generating station is to be treated as a part of generating activity.

16. The rule does not stipulate that they shall be supplied power at the cost of generation. In respect of generating station like OHPC have entered into PPA with GRIDCO the Bulk Supplier of electricity to the distribution companies for 100% power generated out of the plant less auxiliary consumption. This is so because the entire capacity cost of power plant is paid by GRIDCO on behalf of the consumers of the State. A limit has been fixed on the level of auxiliary consumption of power station in accordance with the CERC Regulation for determination of tariff for

*generating stations which is a guiding factor for the State Commission for determination of generation staff.*

*17. Therefore, any consumption in excess of the auxiliary consumption will have to be paid for at a rate and the amount credited to generation revenue which could reduce the cost of generating tariff. With this concept in mind and keeping in view the Removal Difficulties Rules notified by the Government of India as stated earlier the total utilization of power by OHPC both for generation of power as well as for supply of power to the colonies housing their operating staff shall be limited to the normative level of auxiliary consumption as allowed by the Commission. Any consumption in excess of that, if any,(which may be due to the supply of power to the housing colonies of the operating staff) shall be treated as supply in excess over auxiliary consumption.*

18. For this excess consumption OHPC can give a credit to itself at a rate equal to the retail supply tariff for supply in bulk housing colonies as applicable to the consumers of SOUTHCO. This reduces the revenue requirement of OHPC. SOUTHCO does not stand to lose any manner as the revenue deemed to be collected for OHPC will not be appearing as a part of their revenue receipt. As far as GRIDCO is concerned due to reduction in revenue requirement they do not stand to lose any way. There are the consumers other than the housing of the generating companies, who shall be treated as the consumers of SOUTHCO, the license for the area for which separate meter has to be done.

19. Further, in the minutes of the meeting between OHPC, SOUTHCO, GRIDCO and Potteru Irrigation Project authority held on 22.05.2006, it was decided that OHPC and non-OHPC load would be segregated. The

*process of segregation work shall be completed by SOUTHCO within six months time. So, SOUTHCO should take immediate steps for segregation of non-OHPC load and supply power to the local consumers excluding OHPC consumers from SOUTHCO SOURCES.”*

33. The reasons contained in the observations referred to above and its findings would indicate the following aspects:

- (i) During the disputed period, namely from the year 1999 to the year 2005, the Appellant did not have any distribution system of its own for supply of electricity to the Power House Colony of OHPC.
- (ii) In the absence of the distribution network and in the absence of any agreement between the Hydro Power Corporation and the Appellant,

the end users connected to the Power House Colony cannot be treated as a consumers of the Appellant, the distribution licensee. If no users of the Power House Colony are consumers of the distribution licensee, then there is no question of the Appellant distribution licensee billing them. The Appellant is not entitled to contend that it has no function or duty to maintain supply to such end users of the colony but at the same time, the Appellant can claim the benefit of the revenue from such end users.

- (iii) The arrangement was fairly worked out even before the Electricity (Removal of Difficulty) order was passed in the year 2005 to the effect that GRIDCO/Appellant(SOUTHCO) may develop its own distribution system and take over the end users as its consumers. The OHPC also requested the GRIDCO/SOUTHCO

(Appellant) to do so. However, both GRIDCO/SOUTHCO (Appellant) failed to take any steps for establishing its distribution network even though the Appellant claims that the Power House Colony within its area of supply.

34. Even in the impugned order there is a mandate to the Appellant to develop their distribution network within 6 months, so that the non-OHPC load can be transferred to the SOUTHCO but the Appellant has not taken any steps till date for establishing its own network.

35. Thus in the absence of any network of GRIDCO/SOUTHCO to deliver electricity to end users in the OHPC colony, there cannot be any claim for revenues from the end users. The arrangement entered into between the parties clearly show that OHPC was not billing

GRIDCO for the energy supplied to the Power House Colony and GRIDCO was not billing the SOUTHCO for the energy billed to the Power House colony.

**36. SUMMARY OF OUR FINDINGS:**

**I. The reading of the various provisions referred to in the above paragraphs would show the contention of the Appellant that it being a Distribution Licensee over the area alone is competent to supply to Power House Colony and therefore the Appellant has got the legal authority to bill the Orissa Power Corporation Ltd. for such a consumption is without any basis. During the disputed period i.e. from the year 1999 to the year 2005 the Appellant did not have any distribution system of its own for supply of electricity to the Power House Colony by Orissa Hydro Power Corporation. In the absence of the distribution network and in the absence of any agreement between the Orissa Hydro**

**Power Corporation and the Appellant the end users to the Power House Colony cannot be treated as consumer of the Appellant.**

**II. The arrangement was worked out even before the Electricity (Removal of Difficulty) Order was passed in the year 2005 to the effect that the Appellant may develop its distribution system and take over the end users as its consumer. As a matter of fact the Hydro Power Corporation requested the Appellant to develop its own distribution system within its area of supply but the Appellant has never taken any steps for establishing its own net work in that area. Therefore the Appellant is not entitled to make any claim for the revenue from the end users in the area, where it has not establish its own net work.**

36. In view of the above findings, we do not find any merit in any of the contentions urged by the Learned Counsel for the Appellant especially when the conclusions arrived at by the State Commission on the basis of the materials placed before it, are perfectly justified.

37. Hence the Appeal is dismissed as devoid of merits. However, there is no order as to cost.

(Rakesh Nath)  
Technical Member

(Justice M.Karpaga Vinayagam)  
Chairperson

Dated: 22<sup>nd</sup> February, 2011-02-21

REPORTABLE/NON-REPORTABLE.