

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

Appeal No. 33 of 2011 & IA Nos. 50 & 51 of 2011
&
Appeal No. 34 of 2011 & IA Nos. 52 & 53 of 2011

Dated: 6th September, 2011

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

Appeal No. 33 of 2011 & IA Nos. 50 & 51 of 2011

In the matter of:

**GRIDCO Limited (Formerly known as
Grid Corporation of Orissa Ltd.),
Bhubaneswar, Orissa-751 022**

... Appellant(s)

Versus

**1. North Eastern Electricity Supply Co. of Orissa Ltd.,
Corporate Office, Januganj,
Balasore-756019,
Orissa**

**2. Orissa Electricity Regulatory Commission,
Bidyut Niyamak Bhawan, Unit-VIII,
Bhubaneswar, Orissa-751 012**

... Respondent(s)

Appeal No. 34 of 2011 & IA Nos. 52 & 53 of 2011

In the matter of:

**GRIDCO Limited (Formerly known as
Grid Corporation of Orissa Ltd.,
Bhubaneswar, Orissa-751 022**

... Appellant(s)

Versus

**1. Western Electricity Supply Co. of Orissa Ltd.,
Corporate Office, Burla,
Sambhalpur-768017,
Orissa**

**2. Orissa Electricity Regulatory Commission,
Bidyut Niyamak Bhawan, Unit-VIII,
Bhubaneswar, Orissa-751 012** ... Respondent(s)

Counsel for the Appellant(s): Mr. R.K. Mehta
Mr. Antaryami Upadhyay
Mr. David A

Counsel for the Respondent(s): Mr. Pravakar Swain, Secy. OERC
Ms. Rajdipa Behura
Mr. C.S. Chauhan
Mr. Rutwik Panda
Mr. Suresh Tripathy

JUDGMENT

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

Appeal nos. 33 of 2011 and 34 of 2011 have been filed by GRIDCO Limited against the two orders of the Orissa Electricity Regulatory Commission, both dated 31.07.2009, allowing an additional rebate for early payment to the North-Eastern Electricity Supply Company of Orissa and Western Electricity Supply Company of Orissa respectively.

2. The appellant is a state owned company carrying the function of bulk supply of electricity to the four distribution licensees in the State of Orissa. In both the Appeals the first respondent are the distribution

licensees in Orissa and the second respondent is the State Commission.

3. The brief facts of the appeal no. 33 of 2011 are as under:

3.1. The appellant raised a bill for Bulk Supply Power and transmission charges on the first respondent for the month of April, 2007 vide letter dated 4.5.2007 amounting to about Rs. 55.14 crores with the request to arrange payment through letter of credit on presentation/upfront by cash within 48 hours in order to avail a rebate of 2%.

3.2. The first respondent vide letter dated 5.5.2007 advised its bank to make payment of Rs. 43.37 crores only to the appellant towards the bulk supply power bill for the month of April, 2007 including the transmission charges of the state transmission licensees, referring to some unresolved dispute with the appellant. The bank,

according to the instructions of the first respondent, remitted Rs. 43.37 crores only to the appellant on 7.5.2007. At that time the Letter of Credit ('LC') established by the first respondent in favour of the appellant was for only Rs. 45 Crores, insufficient to cover the entire bill for the month of April, 2007.

3.3. On 7.5.2007 the appellant advised the bank that the first respondent is liable to pay bulk supply and transmission charges amounting to Rs. 55.14 crores pursuant to the Bulk Supply Price Order of the State Commission dated 22.3.2007.

3.4. On 8.5.2007 the appellant submitted the Monthly Energy Invoice for the month of April, 2007 after adjusting the payment made by the first respondent and negotiated the letter of credit for payment of the balance amount of Rs. 11.77 crores. Thus the balance payment of Rs. 11.77 crores was received by the appellant through

negotiation of letter of credit issued by the bank, after the expiry of limit of two working days within which the payment has to be made to avail 2% rebate.

3.5. The appellant allowed the following rebate to the first respondent:

(i) 2% on full amount of transmission

Bill of Rs. 8.21 crores = Rs.16.42 lakhs

(ii) 1% on full amount of BSP

Bill of Rs. 46.93 crores = Rs. 46.93 lakhs

Total rebate on Rs. 55.14 crores = Rs. 63. 35 lakhs

3.6. Subsequently, the first respondent filed an application before the State Commission for a direction to the appellant to grant 2% rebate on total amount. By order dated 31.7.2009, the State commission directed the appellant to allow additional one percent rebate on the BSP bill amounting to Rs. 46.93 lakhs.

3.7. The appellant filed a review petition against the order dated 31.7.2009 with the State Commission which was dismissed by the State Commission vide its order dated 22.3.2010. Aggrieved by the order dated 31.7.2009, the appellant has filed this appeal.

4. The facts of the case in appeal no. 34/11 are also similar except the amounts of Bill raised by the appellant, amount of rebate and Letter of Credit established by the respondent. In this case, the amount of the Bill was Rs. 81.30 crores and the amount paid by cash by the first respondent was Rs. 54.15 crores. The LC amount was Rs. 60 crores.

5. Since the issue raised and the impugned orders in both the appeals are similar, a common judgement is being rendered.

6. The learned counsel for the appellant argued that according to the order dated 22.3.2007 of the State Commission it was stipulated that the rebate of 2% will be allowed for payment of bills through a letter of credit on presentation/upfront by cash within two working days and if payments are made by means other than through LC but within a period of one month, a rebate of only 1% will be allowed. The bank only released partial payment against the bill on the instructions of the respondent distribution licensees within two working days. Since full payment was not received against the BSP bill therefore, a rebate of only 1% was allowed as per the order of the State Commission. The distribution licensees used to pay the monthly bills within two days of presentation. However, in this case only partial payment was made resulting in invoking of LC after the expiry of the two working days. The impugned directions of the State Commission are contrary to the tariff order dated 22.3.2007. Moreover, the partial payment was received through bank at the

end of the day on 7.5.2007 and it was not possible to negotiate LC on the same day.

7. The learned counsel for the State Commission has argued that the respondent should have invoked the LC on 7.5.2007, the last day of rebate period for claiming 2% rebate, instead of negotiating the LC on 8.5.2007. Otherwise, the appellant should have waited till the time limit of one month of Bill date to encash the differential amount and allow the rebate of 1%. Because of presentation of Bill on 8.5.2007 by the appellant, the distribution licensees suffered loss on account of payment of interest on bank overdraft for 28 days as well as losing rebate of 1%. The direction given by the first respondent to the bank for not making full payment to the appellant could not have taken away the rights of the appellant to negotiate the LC with the escrow bank.

8. After considering the contentions of the parties, the following question would arise for our consideration:

Was the State Commission correct in allowing 2% rebate on BSP bill considering that only part payment was released by the bank to the appellant by cash within two working days and the LC was also not adequate to cover the full months Bill?

9. Let us first examine the provision for rebate in the BSP order dated 22.3.2007 of the State Commission, which is reproduced below:

"Rebate: For payment of bills through a letter of credit on presentation/upfront by cash within two working days, a rebate of 2% will be allowed. If the payments are made by a mode other than through a letter of credit but within a period of one month of presentation of bills, by the distribution licensees, a rebate of 1% will be allowed"

Thus, the rebate of 2% is allowed for payment of bills through LC on presentation or upfront by cash within two working days.

10. Let us now examine the findings of the State Commission. The relevant extracts of the impugned order in appeal no 33 of 2011 are reproduced below:

“After going through the submission made by NESCO and GRIDCO and perusal of the connected documents Commission finds that it is the NESCO which initiated action by instructing Union Bank to pay lesser amount i.e. 43.37 cr. against the bill of Rs. 55.14 cr. (8.21 cr. Transmission bill+ 46.93 cr. BSP bill). This was done by NESCO on the plea that the company was liable to pay the BST bill for 2006-07, at the rate applicable for 2005-06 in view of the orders of Appellate Tribunal dtd. 13.12.2006. There was no sufficient ground for issuing such as avoidable instruction to Union Bank. On the other hand there was not legal difficulty on the part of GRIDCO to ensure receipt of full payment by invoking the letter of credit, which GRIDCO did, but after a

delay of 24 hours from the permissible date of rebate”.

.....

Under such circumstances, NESCO lost rebate of 1% on the bill amount 46.93 cr. which amounts to 46.93 lakh. At the same time they had to pay additional LC charges @ 13.75% on the balance amount of Rs 11.77 cr. (46.93-35.16). Commission does not approve the behaviour of NESCO in issuing unwarranted instruction to Union Bank and as such has to bear the burden of LC charges of 13.75% on 11.77 cr. for which there is no escape. However, Commission feels that GRIDCO did not utilize the authority given to it to encash the LC within the stipulated period of rebate. Moreover, Commission further observes that this is the only instance where NESCO had made default. In the remaining month of FY 2006-07, there was not dispute between GRIDCO and NESCO so far as payment of BST is concerned. The spirit of Commission’s BSP order dtd. 22.03.2007 on payment of rebate quoted above is to enforce timely payment to GRIDCO by DISCOMs. This mechanism does not have any intention to put any licensee to financial loss.

Hence, Commission directs that the loss of rebate of 1% on Rs. 46.93 Cr. which amounts to Rs. 46.93 lakh is to be made good by GRIDCO and directs GRIDCO to adjust the same from the BST bill of NESCO for the month of September, 2009 to be raised in October, 2009”.

Thus, the State Commission while disapproving the action of the first respondent in instructing its bank to make only part payment, has felt that the appellant did not utilize the authority to encash the LC within the stipulated period of rebate of 2%. The findings of the State Commission in appeal no. 34 of 2011 are also similar.

11. In light of the above orders, we will examine the matter. For convenience, we will be referring to the dates and figures relating to appeal no. 33 of 2011.

12. On 5.5.2007, the first respondent had advised its bank to release partial payment under intimation to the

appellant. We notice that on 7.5.2007 the appellant referring to the letter dated 5.5.2007 of the first respondent advised the bank that the first respondent was liable to pay full amount to the appellant. Thus the appellant was aware about the first respondent's direction to its Bank for making part payment by cash and could have invoked the LC on 7.5.2007 itself within two working days (6th May being Sunday) instead of negotiating the same one day after the elapse of the grace period. The LC was a payment security available with the appellant and it could have negotiated the same for the balance amount within the grace period of two working days.

13. Learned counsel for the appellant has argued that the impugned direction in the order to grant rebate to the respondents is contrary to the Tariff Order dated 22.3.2007. The Tariff Order provides for payment of bills both through LC on presentation and upfront by cash.

The bill for April 2007 was realized partly by cash payment and partly by LC. The State Commission has only held that the appellant could have negotiated the LC on 7th May, 2011 instead of 8th May, 2011. Thus, there is no violation of the Tariff Order in the impugned order.

14. In view of the above, we do not find any fault with the order of the State Commission and the same is reaffirmed.

15. The appeal is found devoid of any merit and dismissed without any cost.

16. Pronounced in the open court on this
6th day of September, 2011.

(Justice P.S. Datta)
Judicial Member

(Rakesh Nath)
Technical Member

REPORTABLE / NON-REPORTABLE

vs