

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

**Appeal No.12 of 2012 &
I.A. No. 20 of 2012**

Dated: 31st August, 2012

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

In the matter of:

M/s. Aditya Cement,

Village Khairwari, P.O. Suhela,
Tehsil Simga, Distt. Raipur,
C.G. - 493 195

... **Appellant**

Versus

1. **Chhattisgarh State Electricity Regulatory Commission,**
Through its Secretary,
Irrigation Colony, Shanti Nagar,
Raipur-492 001.

2. **Chhattisgarh State Power Distribution Co. Ltd.,**
Through its Managing Director,
Danganiya, Raipur, C.G. -492014

...**Respondent(s)**

Counsel for the Appellant(s) : Mr. Raunak Jain

Counsel for the Respondent(s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshdri
Ms. S. Saho Mishra for R-1
Ms. Suparna Srivastava &
Mr. Sudhir Kathpalia for R-2

JUDGMENT

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by M/s. Aditya Cement challenging the order dated 8.11.2011 of the Chhattisgarh State Electricity Regulatory Commission

(“State Commission”) interpreting the various provisions of the State Supply Code regarding Notice of Availability of Supply by the distribution licensee to the consumer.

2. The State Commission is the Respondent no. 1. Chhattisgarh State Power Distribution Company Ltd., the distribution licensee, is the Respondent no. 2.

3. The brief facts of the case are as under:

3.1 The Appellant is a mini steel plant. On 19.4.2007, the Appellant and the erstwhile Chhattisgarh State Electricity Board executed an agreement for High Tension supply of 980 kVA at a voltage of 33 kV to the Appellant. The Appellant also deposited the required charges for executing line work and extension of mains.

3.2 On 14.2.2008 the work relating to extension of mains at 33 kV upto the Appellant's premises was completed by the Respondent no. 2, the distribution licensee and successor of the State Electricity Board.

3.3 On 1.5.2008 the Respondent no. 2 issued Notice of Availability of Supply intimating that supply of electrical energy was available and further requiring the Appellant to take the supply of electricity within three months of the date of the said notice, failing which the Appellant would be liable to pay the minimum charges from the first date after expiry of three months from the issue of instant Notice.

3.4 On 14.7.2008, the Appellant informed the Respondent no. 2 that the necessary permissions from the State Environment Conservation Board and from Chief Electrical Inspector had not been received by the

Appellant and in the absence of the same the Appellant could not avail the supply. Further, the Appellant lodged its protest against issuance of Notice of Availability of Supply on account of non-installation of metering arrangements as stipulated under Regulation 4.21 of the Supply Code.

3.5 On 21.1.2010, the Chief Electrical Inspector accorded the clearance to the Appellant to avail supply of electricity. On 7.6.2010, the Appellant also received necessary environment clearance.

3.6 On 1.7.2010, the Respondent no. 2 issued a bill to the Appellant claiming Rs. 81,51,650/- on account of minimum charges.

3.7 On 19.7.2010, the Respondent no. 2 furnished a Report on installation and commissioning of complete metering system at the premises of the Appellant.

However, the Respondent no. 2 informed the Appellant that the Appellant had to make payment against the outstanding dues relating to minimum charges for the intervening period from the expiry of the 3 months Notice of Availability of Supply to enable release of electricity connection.

3.8 On 23.8.2010 the Appellant filed a petition before the State Commission for interpretation of Regulation 4.21 of the Supply Code and further prayed for directions under Regulation 28(3) of the Conduct of Business Regulations, 2009.

3.9 The State Commission without giving an opportunity of hearing to the Appellant passed the order dated 13.9.2010 rejecting the petition on the ground that the matter related to billing dispute and hence ought to be entertained by the Consumer Grievance Redressal Forum. The Appellant filed an

Appeal against the order dated 13.9.2010 of the State Commission. This Tribunal on 15.12.2010 while disposing the Application of the Appellant directed the State Commission to take up the Petition filed by the Appellant and decide the matter in accordance with law by giving reasons after hearing the parties.

3.10 Thereafter, the State Commission after hearing the parties, passed the impugned order dated 08.11.2011. Aggrieved by the order dated 08.11.2011 of the State Commission, the Appellant has filed this Appeal.

4. The Appellant has made the following submissions:

“4.1 The Appellant is aggrieved by the findings of the State Commission that Regulation 4.7 of the Supply Code stand more in consonance with the reason of

justice as compared to the provisions of Regulation 4.21 of the Supply Code and hence should be applied in the instant case. Regulation 4.21 of the Supply Code clearly mandates that only after completion of extension of line upto consumer premises and installation of proper metering arrangements, the distribution licensee has to issue Notice of Availability of Supply to the consumer. As against this, Regulation 4.7 is a general provision under the Licensee's obligation to supply regarding Notice to consumer when the distribution licensee is ready to give supply. The State Commission has wrongly invoked the 'Vikalp' principle of the Mimansa system and has failed to note the generality of Regulation 4.7 vis-à-vis the substantive provisions of Regulation 4.21 of the Supply Code.

4.2 Regulation 4.21 is a substantive provision regulating the process of making an application for supply of electricity when the consumer has not opted to install the meter and metering arrangement himself. On the other hand, Regulation 4.7 is a general provision when the consumer may elect to install the meter and metering arrangements himself and cannot be interpreted to be conflicting with Regulation 4.21 at all. The question as to whether the provisions of Regulation 4.7 or Regulation 4.21 would be applicable would necessarily depend upon the option exercised by the consumer to install the meter himself or not. Thus, both Regulations 4.7 and 4.21 are applicable in different circumstances and are in fact complementing each other and cannot be said to be conflicting with each other.

4.3 In case no meter is installed, the distribution licensee is in no position to make the supply available to the consumer even though the Notice of Availability of Supply had been issued, as in the instant case.

4.4 The rationale behind levy of fixed/minimum charges from the consumers is to compensate the distribution licensee for the investment made by the licensee in extending the distribution mains to make the supply of electricity available to the consumer and for fixed cost of contracting power from various sources for maintaining such supply. In the present case, the distribution licensee has already recovered the charges towards the extension of distribution mains to the Appellant's premises. Further, the entitlement of the licensee to recover fixed/minimum charges for recovering the cost of power procurement arises only in case the supply is actually made

available to the consumer after installation of proper metering arrangements”.

5. On the above issues, learned counsel for the Appellant made detailed submissions. On the other hand, learned counsel for the Respondent no. 2 argued in support of the findings of the State Commission.

6. The following questions would arise for our consideration keeping in view the rival contentions of the parties:

- i) Whether the State Commission was correct in interpreting the Supply Code by holding that Regulation 4.7 of the Supply Code is more in consonance with reason and should be preferred over Regulation 4.21 on the basis of principle of Mimansa?

ii) Whether the State Commission has erred in clarifying that there is no compulsion of installation of metering arrangement and meter before issuance of notice of availability of supply by the licensee to the consumer and, therefore, three months notice issued by the Respondent no. 2 to the Appellant without installation of metering arrangement was in order?

7. The above issues are inter-connected and, therefore, are being dealt with together.

8. The main issue in this Appeal is whether the Distribution Licensee (R-2) could give notice for availability of supply to the consumer prior to installation of the metering arrangement.

9. Let us first examine the relevant provisions in the Electricity Act, 2003.

10. According to Section 43 of the 2003 Act, the distribution licensee has obligation to provide supply to an Applicant which requires extension of distribution mains or commissioning of new substations, immediately after such extension or commissioning or within such period as may be specified by the State Commission. “Main’ according to definition in the Act, would mean any supply-line through which electricity is or is intended to be supplied. Accordingly, the State Commission in the Supply Code has provided for a time of 3 months within which supply has to be extended by the licensee to a person where extension of work is required to be undertaken, after receipt of the estimated charges.

11. Section 43(2) stipulates that it shall be the duty of the distribution licensee to provide, if required, electric plant or electric line for giving supply to the premises of the Applicant. Electric line is defined as any line used for carrying electricity. Electrical plant is defined as any plant, equipment, apparatus or appliance but excludes a meter.

12. Section 43(3) stipulates a penalty for failure on the part of the distribution licensee to provide the supply within the period specified by the State Commission. Accordingly, the State Commission has also made a provision for penalty for the delay in providing the supply by the distribution licensee in the Supply Code.

13. Section 50 provides for Electricity Supply Code to be specified by the State Commission for recovery of

electricity charges, etc. Accordingly, the Chhattisgarh State Commission has notified the Supply Code.

14. Section 55(1) prevents the distribution licensee to supply electricity except through installation of a correct meter. It also provides option to the consumer to purchase a meter.

15. Let us now examine the Supply Code.

16. 'Consumer' in the Supply Code is defined as under:

'Consumer' means as defined in Section 2(15) of the Act and for the purpose of this Code shall include a person who has applied for an electricity connection or a person who had a connection but whose electricity supply has been disconnected for the time being for whatever reason".

Thus, the Appellant as an applicant for electricity connection was covered in the definition of 'consumer' as per the Supply Code.

17. 'Date of Commencement of Supply' for HT consumer has been defined as the day immediately following the date of expiry of a period of three months from the date of intimation to an intending consumer of the availability of power or the date of actual availing of supply by such consumer, whichever is earlier.

18. The definition of meter in the Supply Code includes Current Transformers (CT) and Potential Transformer (PT) where used in conjunction with the meter.

19. In Chapter-4 on “Supply of Electricity”, the Licensee’s obligation to supply has been described. The relevant clause 4.7 is reproduced below:

“4.7 When the licensee is ready to give supply, he shall serve a notice on the consumer to take supply of electricity within one month, in case of LT consumers, and three months in case of HT or EHT consumers. If the consumer fails to avail supply within the notice period, he shall be liable to pay any charges due thereon as per the provisions of the supply agreement from the day following the end of the notice period.”

According to clause 4.7, the licensee, after it is ready to give supply shall send notice to the HT consumer to take supply within three months. If the HT consumer fails to avail supply within the notice period of three months then he will be liable to pay any charges due

thereon as per the provision of the supply agreement after the completion of the notice period.

20. In the same chapter 4 in Supply Code under the heading “Application for Supply”, is the clause 4.21 which is reproduced below:

“4.21 On payment of necessary charges including security deposit, and execution of the agreement, the licensee shall take up the work of extension of mains. If the consumer wishes, he may execute the job on his own after payment of due supervision charges to the licensee. All extension work shall be completed within a maximum period of 90 days for HT consumer and within 180 days for EHT consumer. The licensee shall inform the consumer of the availability of supply, after completion of extension of mains up to the consumer’s premises, including installation of proper metering arrangement. After completion of the installation, the consumer shall furnish to the licensee the test report and the permission from the Electrical Inspector to energize the installation. In

case of mines, permission from the Inspector of Mines shall also have to be furnished. Where applicable, the permission of statutory authorities like Water and Pollution Control Board shall also have to be furnished. On receipt of the reports, the licensee shall inform the consumer in writing the date of inspection and testing of the consumer's installation. In case the consumer's installation is found in order, the licensee shall seal the meter in the presence of the consumer and serve the connection. A cubicle for housing the meter and metering equipment shall be provided by the licensee. The necessary CT/PT and the HT meter should be connected only through armoured cable without any joint and the cable should not be encased in any pipe and should be visible”.

21. The above clause 4.21 explains the process for extension of mains and energisation of the consumer's installation. It stipulates that:

i) After completion of extension of mains upto consumer's premises including installation of proper

metering arrangement, the licensee shall inform the consumer of availability of supply.

(ii) The consumer has also to furnish the test report and permission from the Electrical Inspector and permission from Water and Pollution Control Board before energisation of its installation by the distribution licensee.

(iii) On receipt of the reports, the licensee shall inform the consumer in writing the date of inspection and testing of consumer's installation.

(iv) In case the consumer's installation is found in order, the licensee shall seal the meter and serve the connection.

22. Now let us examine the facts and sequence of events of this case.

i) On 19.4.2007 the Appellant and the Electricity Board, the predecessor of the

Respondent no. 2, entered into an agreement for High Tension Supply. As per the terms of the agreement, the commencement of the agreement shall be date either from the actual date on which the consumer has begun to take electrical energy or the day, immediately following the expiry of three month's notice of intimation served by the Electricity Board that the supply of electrical energy is available, whichever is earlier.

- ii) On 1.5.2008, the Executive Engineer of the Electricity Board sent a notice that supply of electricity was available and that the Appellant was required to take the supply within three months failing which the Appellant will be liable to pay minimum guaranteed charges. The relevant excerpts

from the notice dated 1.5.2008 are reproduced below:

“NOW THEREFORE TAKE NOTICE that supply of electrical energy in accordance with the said agreement is available and you are hereby required to take the supply of the Electrical energy within three months from the date of this notice, in default where of you will be liable to pay the Board the minimum guaranteed charges from the first date after expiry of this notice of availability of supply referred to above”.

- iii) In reply to the above notice the Appellant vide its letter dated 14.7.2008 i.e. after about two and a half months of the receipt of the notice for supply from the Electricity Board informed the Electricity Board that they had not received the clearance from Pollution Control as well as from Electrical Inspectorate office to get connection in their premises. Thus the Appellant about 17 days

before the expiry of the 3 months notice expressed inability to avail supply due to non-availability of Environment clearances and clearance from Electrical Inspector.

- iv) On 3.11.2008, after expiry of the notice period, the Appellant on receipt of a bill from the Electricity Board wrote to the Board that the electrical connection and line meter related work had not been completed and even without the completion of the aforesaid work, the notice for availability of supply had been sent. However, in this letter also the Appellant did not intimate its readiness to avail supply.
- v) On 12.11.2009, the Appellant wrote to the Respondent no. 2 that CT and PT have been installed on 27.09.2008 outside the gate of their

- factory but neither the cable nor any meter had been connected to the same.
- vi) On 21.01.2010, the Electrical Inspector issued a clearance to the Appellant to energise its electrical installation.
 - vii) On 7.6.2010, the Environment clearance was given by the concerned authority to the Appellant.
 - viii) On 10.6.2010 the Appellant sent copies of clearances obtained from Electrical Inspector and the Environmental clearance to the Respondent no. 2.
 - ix) On 19.7.2010, metering system was commissioned at the premises of the Appellant by the Respondent no. 2. However, the connection was not energized due to non-payment of bills for minimum charges raised by the Respondent no. 2 after completion of the 3 months notice.

- x) On 28.10.2010, the Respondent no. 2 allowed the Appellant payment of outstanding bill for minimum charges in 12 equal monthly instalments. Thereafter, the connection of the Appellant was released.

23. The following factors would emerge from the above sequence of events:

- i) The Respondent no. 2 sent a notice for supply on 1.5.2008 after extending the supply mains to the Appellant's premises. However, metering system was not installed.
- ii) The Appellant obtained the necessary clearances from Electrical Inspector and Environment Authority on 21.01.2010 and 07.06.2010 respectively. Thus prior to 07.06.2010 the Appellant was not ready to avail supply from the Respondent no. 2.

iii) Metering system was commissioned after the Appellant obtained the necessary statutory clearances.

24. The Appellant has contended that the notice dated 01.05.2008 was invalid as the notice was given without installing metering system as per clause 4.21 of the Supply Code.

25. Let us examine the findings of the State Commission. The relevant findings are reproduced below:

“We have also observed that the actual role of meter and metering arrangement/device arrives only at the time of release of connection, and not at the time of issuance of notice to consumer of availability of supply up to its premises.

.....

6. We would like to refer contents of clause 39 and 41 of order dated 13.03.2008 of Hon'ble Supreme Court of India in case of civil appeal no. 1940 of 2008 and no. 1941 of 2008 in respect of Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd. which states that:-

41.xxxxxxxxxxxxxxx

(2) The second situation is a conflict where it is impossible to reconcile the two conflicting texts despite all efforts. In this situation the Vikalpa principle applies, which says that whichever law is more in consonance with reason and justice should be preferred. xxxxxx.”

“We have observed here that there is conflict between provisions in clause 4.7 and 4.21 of Supply Code. Clause 4.7 states that when licensee is ready to give supply it shall serve notice of availability of supply to consumer, where as clause 4.21 states that licensee shall inform consumer of availability of supply after installation of proper metering arrangement. The second option of principle of Mimansa i.e. “vikalp” says that where

ever law is more in consonance with reason and justice should be preferred. We may look into as to which text i.e. provision of clause 4.7 or clause 4.21 is more consonance with reason.

.....

As stated above, the condition of installation of metering arrangement before issue of 3 months notice of availability of supply restricts the consumer and licensee both in process of release of connection in different situations, on account of the reasons for which individual is not responsible. Moreover, the role of meter and metering device occur only at the time of release of connection and there is no role of meter and metering arrangement at the time of issue of 3 months notice of availability of supply by the licensee. Further, the conclusion about whether the distribution licensee is ready and is in position to release the connection and accordingly issue notice to consumer shall be left with the licensee as such if licensee fails to release the connection within the time schedule prescribed in CSERC (Standard of Performance in Distribution of Electricity) Regulations, 2006, then it

is liable to pay the compensation to the consumer. Thus, the interest of consumer to get timely connection is saved with this provision. We, therefore, have come into conclusion that provision in clause 4.7 of Supply Code is more in consonance with reasons and hence shall be applicable.

Normally, the work of consumer used to be in advance stage as compared to the licensee and thus consumer tries to avail electric connection in time, probably looking to this aspect and to avoid the possibility of delay in release of the connection mainly on account of non-availability of the meter and metering equipment, such provision seems to have been made in the Supply Code, but it doesn't appear to be mandatory in view of provision in clause 4.7 of the Supply Code.

Therefore we clarify here that there is no compulsion of installation of metering arrangement and meter before issuance of notice of availability of supply by the licensee to the consumer, and therefore, three months notice issued by

respondent without installation of metering arrangement is in order”.

26. We are in agreement with the findings of the State Commission as we feel that the relevant clause for issue of notice by the distribution licensee about its readiness to supply is clause 4.7 of the Supply Code. Clause 4.7 does not specify installation of metering system. Clause 4.7 also clearly specifies the consequences of the failure of the consumer to avail supply within the notice period.

27. Admittedly the mains were extended by the Respondent no. 2 to the Appellant on or before 1.5.2008 and thereafter notice dated 1.5.2008 was given by the Respondent no. 2. According to clause 4.21, the Appellant had to furnish the environment clearance, test report and permission for Electrical Inspector to energise the installation.

28. Admittedly the statutory clearances were obtained by the Appellant by 07.06.2010 and only on 10.06.2010, the Appellant furnished the copies of the statutory clearances and test certificate of relay along with receipt of security deposit, required to be furnished as per clause 4.21 of the Supply Code.

29. According to the submissions made by Respondent no. 2 before the State Commission which have been recorded in the impugned order, the extension of 33 kV line from their existing system to the Appellant's premises was completed on 14.02.2008. Suitable metering equipment was arranged on 29.04.2008 from Area Store, Raipur and got tested on 30.04.2008. Accordingly, the Notice regarding availability of supply was issued by the Executive Engineer on 01.05.2008. The meter was

readily available with the concerned Executive Engineer of the Respondent no. 2. However, the Appellant was not in a position to avail supply.

30. Learned counsel for the Respondent no. 2 has submitted a copy of the letter dated 01.05.2008 sent by the Executive Engineer to the concerned Superintending Engineer which was placed before the State Commission. The letter indicates availability of metering equipment with the Executive Engineer. He has also requested for direction to MRT division for immediate action for the connection to the Appellant. The letter clearly indicates the availability of metering equipment at the time of giving notice of supply dated 1.5.2008.

31. Learned counsel for the Appellant has argued that clause 4.7 and 4.21 will be applicable in different

circumstances. According to the learned Counsel for the Appellant, Clause 4.7 will be applicable if the consumer has exercised the option to install meter himself whereas clause 4.21 will be applicable, if the licensee has to install the meter.

32. We are not in agreement with the above contention of the learned counsel for the Appellant. Clause 4.7 is covered under the sub head “licensee’s obligation to supply”. On the other hand clause 4.21 is covered under the sub-head “Application for Supply”. The conjoint reading of Supply Code does not indicate that clauses 4.7 & 4.21 have to be applied under different circumstances. The clause 4.7 and 4.21 do not state that these are applicable in different conditions, viz. where the meter has to be installed by the consumer or the distribution licensee. Clause 4.7 clearly provides for notice period of 3 months for HT

consumers and specify the consequences of delay by the consumer to avail supply within the notice period. On the other hand, clause 4.21 does not stipulate any notice period or specify consequences of delay in availing supply by the consumer.

33. If the contention of the Appellant that clause 4.21 is applicable in case where meter is to be installed by the distribution licensee is accepted, then it would mean that the notice period and the consequences for delay by the consumer to avail supply will be applicable only for consumers who opt to install their own meters and not for those who opt for installation of meter by the distribution licensee. This does not seem to be logical.

34. Learned counsel for the Appellant has also contested rational for levying fixed/minimum charges

when the cost of extending the distribution mains to make the supply available to the consumer has been borne by the consumer and no actual supply has been made. In other words, the Appellant is challenging the Regulations. We feel that the Tribunal is not the correct forum to challenge the Regulations and the Appellant has to seek alternate remedy for the same.

35. Learned counsel for the Appellant has argued that the State Commission has differed from its own ruling vide order dated 04.05.2011 in the case of another consumer, viz. M/s. Sarda Energy & Minerals Ltd. We have gone through the order dated 4.5.2011. We find that the dispute in that case was different. In that case the distribution licensee extended the mains and provided the metering arrangement including sealing of the meters on 15.07.2010. However, the consumer could actually avail supply on 02.09.2010,

before the expiry of the three months notice period. Accordingly, the State Commission decided that the agreement between the distribution licensee and the consumer should be treated to be commenced from 02.09.2010 and not from the date of extending mains and providing of the meters. The facts and findings of the present case are different, as the Appellant itself was not ready to avail supply within the notice period.

36. Learned counsel for the Appellant has also argued that the notice of availability of supply is illegal because the licensee cannot be ready to supply electricity to the consumer without installation of proper meter in terms of Section 55 of the Act. We feel that the licensee has to install meter before actually supplying the electricity. Notice of availability of supply could be given after the distribution mains have been extended. However, before supply is

actually made after the consumer's installations are connected to the distribution mains, the meter has to be installed. Thus, the meter could be installed before energisation of the consumer's premises. In the present case, since the clearance from Electrical Inspector for consumer's electrical installation had not been furnished, the distribution mains could be connected to the consumer's installation.

37. In view of above, we do not find any substance in the contention of the Appellant and reject the same.

38. **Summary of our findings:**

i) The notice for availability of supply dated 1.5.2008 given by the licensee after laying the line and extending the mains to the Appellant's premises was in order.

ii) The Appellant itself was not ready to avail supply and submitted the required statutory clearance to the distribution licensee as per the clause 4.21 only on 10.6.2010 i.e. about one year and eleven months of the expiry of notice period.

iii) The metering equipment was readily available with the distribution licensee but was not installed before sending notice for availability of supply and was installed after the Appellant completed the documentation required under clause 4.21.

iv) Notice for availability of supply could be given by the distribution licensee after the line is installed and the distribution mains have been extended. The meter could be installed before the supply is actually made i.e. at the time of energisation of consumer's installation. Thus

installation of meter is not necessary before issuance of notice for availability of supply in terms of clause 4.7 of the Supply Code.

39. In view of above, we do not find any infirmity in the impugned order. Hence, the Appeal is dismissed. No order as to costs.

40. Pronounced in the open court on this **31st day of August, 2012.**

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

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REPORTABLE/~~NON-REPORTABLE~~

vs