

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

Appeal No. 246 of 2006

Dated : 06th March, 2009

**Coram : Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. H. L. Bajaj, Technical Member**

IN THE MATTER OF:

Grid Corporation of Orissa Ltd. (GRIDCO)
(A Government of Orissa Undertaking)
Registered Office: Janpath, Bhoingar,
Bhubaneswar – 751 022

... Appellant

Versus

1. M/s. Nav Bharat Ferro Alloys Ltd. (NBFAL)
At/P.O. : Khadagaprasad,
Near Meramundali Station,
Dist. Dhenkanal, Orissa

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

... Respondents

Counsel for the appellant : Mr. Raj Kumar Mehta, Ms. Suman
Kukrety, Mr. Ananta Charan Nath,
Mr. Mragank Sharma, Ms. Nalini
Pal, Mr. Shobhit Jain, Advocates
and Mr. J. N. Choudhary, Deputy
Manager, BST

Counsel for the respondents: Mr. K. Gopal Choudary,

No. of corrections:

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Ms. Sampada Narang and
Mr. Radhakrishnan for Resp.
No.1

Mr. Loknath Mohapatra for Resp.
No.3

J U D G M E N T

Justice Manju Goel, Judicial Member

The appeal is directed against the order dated 19.08.2006 of the Orissa Electricity Regulatory Commission (Commission for short) in case No. 20 of 2006. The respondent No.1, M/s. Nav Bharat Ferro Alloys Ltd. (NBFAL for short) has been supplying 15 MW of power from its captive generating plant (CGP for short) to the appellant M/s. Grid Corporation of Orissa Ltd. (GRDICO for short) at the cost of Rs.2.02 kWh. Vide the impugned order the Commission directed that for the period in question i.e. from 01.04.06 onwards, the calculation of energy supplied be made through the meter installed at the outgoing feeder installed in the premises of the CGP. The appellant is aggrieved of this order and hence the appeal.

Facts:

2) GRIDCO is a trading licensee whereas OPTCL is a transmission licensee in the State of Orissa. OPTCL also performs the work of State Load Despatch Center (SLDC). NBFAL had been looking for an opportunity to sell its surplus power and for open

access from GRIDCO and OPTCL. GRIDCO responded to the request made by NBFAL vide its letter dated 17.01.05. GRIDCO offered to purchase 25 MW power from NBFAL for the period of 25.01.05 to 31.03.05. The offer was conveyed vide a letter dated 20.01.05. The important clauses of the offer were as under:

- “(1) GRIDCO will purchase 25 MW firm power on continuous basis round the clock from NBFAL with effect from 00.00 hours of 25.01.2005.*
- (2) The power will be supplied through the metering point located in the premises of NBFAL which will be treated as the injection point.*
- (3) The cost of power will be Rs.2.02/Kwh on round the clock basis on the injection point.*
- (4) The metering will be done at the injection point.”*

3) NBFAL vide its letter dated 05.04.05 put on record the discussion on supply of 15 MW power to GRIDCO from 01.05.05 to 15.05.05. On 26.04.05 GRIDCO wrote another letter on the subject of purchase of 22 MW power for the period of 01.04.05 to 15.04.05. This letter also had the conditions viz. power to be supplied through the metering point located in the premises of NBFAL and all metering to be done at the injection point. NBFAL's letter dated

06.05.05 asked for a raise in the cost of power. On 15.05.05, GRIDCO issued another letter on the subject of purchase of power from 16.04.05 onwards. The first four conditions relevant for our purpose were as under:

- “(1) NBFAL will supply scheduled power to GRIDCO from 16.04.05 onwards duly intimating Sr. GM, SLDC on day ahead basis.*
- (2) GRIDCO will purchase scheduled power from 16.04.05 onwards.*
- (3) Till independent supply to NBFA is available present metering arrangement at NBFAL premises will continue.*
- (4) Cost of power will be Rs.93.76 paisa/kWh at the injection point for the period from 16.04.05 onwards for supply of such scheduled power.”*

4) “*Independent supply*”, mentioned in point (3) above, it is explained, meant a dedicated feeder. Admittedly, till the letter dated 19.05.05 was written by Grid Corporation of Orissa Ltd. there was no dedicated feeder from NBFAL to the grid’s sub-station at Meramundali. On 22.11.05, NBFAL wrote to GRIDCO informing it (GRIDCO) that it (NBFAL) had entered into an agreement with

Reliance Energy Trading Ltd. (RETL) for sale of 15 MW power for the period 01.01.06 to 31.03.06. It, however, promised that it will make all efforts to regulate its injection to the State grid as per the agreement for the sale of power. NBFAL also requested GRIDCO to advise OPTCL to grant open access. GRIDCO wrote to NBFAL on 09.12.05 asking for NBFAL's confirmation on the following points:

“(1) GRIDCO will purchase 15 MW firm scheduled power on continuous basis round the clock from NBFAL with immediate effect

(2) The power will be supplied through metering point located in the premises of NBFAL, which will be treated as the injection point.

(3) The cost of power will be Rs.2.02/Kwh.”

5) Vide a letter dated 16.12.05, GRIDCO intimated to NBFAL that OPTCL had agreed to extend open access for supply of 15 MW of surplus power. Accordingly on 27.12.05 a Memorandum of Understanding was signed by the parties to enable NBFAL to use short term open access from OPTCL for supply of power to RETL. The two foremost clauses in this MoU are as under:

“(i) OPTCL has accorded permission for short term open access to NBFAL Ltd. for sale of its surplus power to M/s. RETL from their CPP at Meramundali

(ii) Metering arrangement will be provided at Meramundali grid sub-station as per clause 5.5.4 of grid code.”

6) On 31.12.05, NBFAL informed GRIDCO that a trading agreement had been entered into with RETL for supply of surplus power under the short term open access for the period of 01.01.06 to 31.03.06 and therefore from 01.01.06 after meeting the approved scheduled power to RETL the balance power may be taken by GRIDCO under a trading account. GRIDCO looked for confirmation of the terms from NBFAL vide a letter dated 02.01.06. In this letter, GRIDCO mentioned that NBFAL had offered to inject 25 MW of power out of which approved scheduled power to RETL would be considered. The price was stated as Rs.2.20paise per unit for approved scheduled power to GRIDCO. Clause 5 in this letter was as under:

“Further, other charges, scheduling, re-scheduling, billing etc. as per the present agreement in force”.

7) GRIDCO again wrote on 17.01.06, re-affirming that the terms and conditions mentioned in the letter dated 02.01.06 would

remain unaltered. NBFAL wrote to OPTCL on 20.02.06 pointing out that there was a difference of 6.5% between the reading at the meters at Meramundali sub-station and the meter at NBFAL premises. NBFAL gave the details of the differences and then wrote as under:

“From the above it can be seen that the difference between APM02217 (15min), the meter installed at NBFA premises and APM02682 (15min) or APM02448 (15min), the meters installed at Meramundali S/S has a difference of almost 1.3MU, which is more than 6.5% of the power exported through the feeder.

Such amount of loss in a 132KV transmission line of approx. length of 4.5KM is abnormally high & defies any known norms. This casts serious doubts on the accuracy of the meters &/or connected equipment. It may also be seen that the export MD recorded by all the 3nos. identical meters have been recorded at different dates and times which further strengthens views.

Under such circumstances we request you to kindly approve and consider the proven meter APM02217 located at NBFA end for its readings to be considered for export billing purposes till the above problems of meters at Meramandali S/S are resolved / stabilized by necessary

tests & observations. You may suitably direct the connected agencies to do the needful accordingly and oblige us.”

8) NBFAL reiterated vide its letter dated 18.03.06 that the meter at Meramundali sub-station was defective. NBFAL requested OPTCL to allow it to take the meter reading from the meter located at the premises of NBFAL. The following part of the letter needs to be extracted :

“While on the subject we would like to submit that your good self is aware of the fact that the metering unit installed at Meramundali sub-station point is not yet stabilized and showing error for which we had requested to recognize the energy meter located at the premises of NBFA for the purpose of taking meter reading vide our letter No.2601 dated 20.02.06.

You will kindly appreciate that since the metering unit at Meramundali sub-station is defective and requires rectification / replacement of equipments, for the interests of justice we would sincerely appeal to your good self to kindly allow us to take the meter reading from the meter located at the premises of NBFA so that we may not suffer financial loss. It is worth mentioning here that we have

already opened a LC for Rs.20 lakhs and deposited with sr. G.M (PP) which will safeguard the interest of OPTCL.

Trust inline of our submission, you will be kind enough to approve our request letter and allow us to take the meter reading from the apex meter located at the premise of NBFA.”

9) GRIDCO rejected the request of NBFAL and wrote on 21.04.06 that the billing from January 2006 onwards would be as per reading of the meter installed at Meramundali sub-station. NBFAL again requested GRIDCO, vide a letter dated 09.05.06, for considering the apex energy meter located at NBFAL premises for billing purposes of all outgoing power export to GRIDCO and further on open access. In this letter, NBFAL referred to the grid code, clause 5.5.1 and 5.5.4. NBFAL contended that it was performing the power of a generating company while exporting power and that of bulk consumers while importing power. Hence, as per the grid code, NBFAL submitted, for export of power from NBFAL meter reading has to be taken from the meter installed at NBFAL premises while the meter installed at Meramundali grid sub-station could be treated as check meter. It also contended that while importing power a meter installed at Meramundali sub-station would be treated as the main meter.

10) NBFAL then filed an application under section 55, 86(1)(f) and 86(1)(i) of the Electricity Act 2003 praying for a direction to GRIDCO /OPTCL to recognize and accept the reading of ABT compliant apex energy meter bearing SC No. APM02217 installed in the premises of NBFAL for billing purposes of the export from the CGP to the State transmission utility system.

Impugned Order:

11) The Commission observed that the Central Electricity Authority (installation and operation of meter) Regulations 2006 (CEA Regulations for short) had an over riding effect on the Orissa Grid Code, that the CEA regulations 7(1) provided that the location of the main meter of the generating station shall be on outgoing feeders, that a change for the relevant statutory provision during the period of agreement makes certain provisions of the agreement inconsistent with the law in force and that therefore the parties to the agreement shall have to agree to make necessary changes in the agreement to make it consistent with the legal position. The Commission also observed that the 132 kV line from the Meramundali grid sub-station to the premises of NBFAL was owned and operated by OPTCL and OPTCL was recovering maintenance cost for that line and therefore, OPTCL should not claim any amount towards recovery of transmission loss component against this portion of the line due to energy accounting through the meter installed by the State Transmission Utility (STU) at the grid's sub-station. Further it observed that interface between the generator

and the STU was the point where the transmission line of the STU terminates which in that case was the outgoing feeder from the gantry of the generator. The Commission further found that ABT compliant energy meters were already installed by the STU on either side of the 132 kV feeder, connecting the CGP and Meramundali sub-station, and that up to 31.12.05, there was no dispute between the parties with regard to meter reading installed at the premises of NBFAL. Noticing that the CEA Regulations came into effect on 17.03.06, the Commission made the following order:

“In view of the above discussion, the Commission orders that (a) the calculation of energy till 31.03.2006 registered through the meter installed at Meramundali Grid Sub Station shall be made as agreed in the agreement dated 27.12.2005 by the parties and (b) the calculation of energy through the meter installed at petitioner’s premises i.e. at out going feeder of the Generator shall be made with effect from 01.04.2006. The petitioner shall raise the bills accordingly.”

Grounds for appeal:

12) The following are the grounds for the appeal found in the appeal petition:

- (a) The CEA Regulations do not apply to the case as the CEA Regulations relied upon by the Commission relate to a

generating company where as NBFAL is maintaining a captive power plant which is not a generating company.

- (b) The perception of the Commission that OPTCL should bear the loss in transmission from NBFAL to the Meramundali grid sub-station on the ground that OPTCL has been recovering maintenance cost is wrong since the dedicated feeder from NBFAL to Meramundali is a line laid by NBFAL and belongs to NBFAL.
- (c) The network of NBFAL comprise of a captive power station, its switch yard and its 132 kV dedicated line and hence the sub-station at Meramundali is the metering point between NBFAL network and OPTCL network and on this account the metering should be done at Meramundali.

Contention of Respondent No.1:

13) NBFAL has filed a counter affidavit. NBFAL contends that the parties always agreed only for metering at the CGP's end. NBFAL further contends that the Orissa Grid Code No. 5.5.4 which the appellant quoted in the MoU dated 27.12.05 stood superceded by the CEA Regulations and hence even if the MoU is taken into consideration, w.e.f. the date of coming into operation of the CEA Regulation, the meter reading at the CGP's end can alone be taken for the purpose of billing.

Decision with reasons:

14) The order of the Commission makes two different dispensations for two different periods. The Commission has directed that the meter installed at Meramundali sub-station shall be the meter for assessing the energy supplied till 31.03.06 and the meter at the generators premises will be the meter for assessing the energy supplied from 01.04.06 onwards. The rationale behind breaking up the claim of NBFAL into these two periods is that the CEA Regulations came into operation in the month of March, 2006. Apparently, the Commission considers the agreement dated 27.12.05 as the instrument governing the relationship between NBFAL and GRIDCO/OPTCL unless the agreement is superseded or rendered inoperative on account of the CEA Regulations coming into force.

15) It is to be noticed that NBFAL also has not disputed that for the period up to 31.03.06 the bills should be prepared on the basis of meter installed at Meramundali grid sub-station. Thus it is settled that the agreement dated 27.12.05 read with the letter dated 02.01.06 requires metering, for the purpose of billing, at Meramundali grid sub-station. NBFAL has made a feeble attempt to wriggle out of the agreement dated 27.12.05 by saying that the agreement dated 27.12.05 was not acted upon and pleading that the agreement dated 27.12.05 related only to open access for the purpose of supplying to RETL and not for the purchase made by OPTCL/GRIDCO. NBFAL vide its letter dated 22.12.05 asked for

open access for sale to RETL. OPTCL granted open access vide a letter dated 16.12.05. The MoU dated 27.12.05 was for “*use of transmission system of OPTCL for short term open access*”. On 31.12.05, NBFAL wrote that it wanted to inject 25 MW of power to GRIDCO and after meeting the scheduled power sale to RETL the balance could be taken by GRIDCO under the trading account. On 02.01.06, GRIDCO confirmed purchase of 25 MW of power out of which the approved scheduled power to RETL would be considered first. This document also said that “*other charges, scheduling, re-scheduling, billing etc. are as per the present agreement in force*”. The “present agreement” in force would naturally refer to the agreement dated 27.12.05 which required metering, for the purpose of billing, at the Meramundali grid sub-station. The earlier letter dated 19.05.05 said “*till independent supply to NBFAL is available present metering arrangement at NBFAL premises will continue*”. The metering at NBFAL was to continue only till the dedicated feeder line had been installed. Thus the agreements prior to 27.12.05 on the issue of metering for billing were effective only till a dedicated feeder line was installed. Admittedly, the dedicated feeder line was installed on 31.12.05. Therefore, even if the import of the MoU dated 27.12.05 is restricted only to the open access arrangement, the agreement between the parties, as existing prior to 27.12.05, would also lead to the conclusion that on installation of the dedicated feeder line metering for billing would be done at the Meramundali grid sub-station w.e.f. 31.12.05.

16) Further, it is not the case of NBFAL that the metering for injection of power for sale to RETL and metering for sale of power to GRIDCO could be separately done at two different points. Only out of the 25 MW injected, a part had to be sold to RETL. Therefore, the metering of supply from NBFAL had to be done only at one point. As per the document dated 27.12.05 and as per the earlier document of 19.05.05 this metering, for the purpose of assessing the supply made to and received by GRIDCO had to be measured at the Meramundali grid sub-station.

17) The next question is whether the CEA Regulations can make any difference in this contractual arrangement. It can be stated here that the appellant has submitted that the CEA Regulations do not apply to the case because:

- (a) The CEA Regulations cannot supercede the clause No. 5.5.4 of the Orissa Grid Code under which the agreement to record the supply at the Meramundali sub-station was made.
- (b) The CEA Regulations on metering relied upon by the Commission do not apply to this case because the same relate only to a generating station and not the captive generating plant which is in question in this case.

18) We do not need to go into any of these questions because the CEA Regulation relied upon by the Commission does not really

supercede the relevant provisions of the Orissa Grid Code or interfere with the contract between the parties. The CEA Regulation, 7(1), relied upon by the Commission is as under:

7. Locations of meters:-

- (1) *The location of interface meters, consumer meters and energy accounting and audit meters shall be as per the Table given below:*

Provided that the generating companies or licensees may install meters at additional locations in their systems depending upon the requirement

Table

Sl. No	Stages	Main meter	Check meter	Standby meter
A.	Generating Station	On all outgoing feeders.	On all outgoing feeders.	(i) High Voltage (HV) side of Generator Transformers (ii) High Voltage (HV) side of all Station Auxiliary Transformers
B.			
C.			
D.	Consumer directly connected to the Inter-State Transmission System or Intra-State Transmission System who have to be covered	As decided by the Appropriate Commission.		

	<p>under ABT and have been permitted open access by the Appropriate Commission or Any other system not covered above</p>	
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19) As per the tabular statement of the regulation quoted above, for the generating station, main meter is required to be at the outgoing feeders. If the CGP is not equated with a generating station, the clause that will apply is “*any other system*” as given in “D” which provides that the place for metering would be as decided by the appropriate Commission which means the provisions made by the Orissa Grid Code. The relevant provision of Orissa Grid Code relied upon is 5.5.4 which dealt with the CGPs and bulk power consumers. This code made a distinction between a generator and a CGP because two separate provisions have been made for the generator and the CGP. The relevant provision of Orissa Grid Code is as under:

“5.5.4. CGPs & Bulk Power Consumers

Voltage may be 220/132/33 kV or as agreed with the Transmission Licensee, CGPs and Bulk Power Consumers own sub-stations. The Connection point shall be the feeder gantry on their premises. The metering point shall

be at the Transmission Licensee's sub-station or as agreed with the Transmission Licensee."

20) Although the CEA Regulations provided that main meter for a generating station would be at the outgoing feeder, an additional meter at the transmission licensee's premises is not ruled out by the Commission. The proviso to Regulation No.7 clearly says that the generating companies or licensees may install meters at additional locations in their systems depending upon requirement. Thus the CEA Regulations, as quoted above, requires a meter to be installed at the outgoing feeder of the generating station without curtailing the option for a feeder at the end of the transmission licensee or in the recipient's end. Therefore, even if the CEA Regulations are applied they will not invalidate an agreement requiring assessment of supply at the end of the licensee's sub-station, which in the present case is the Meramundali grid sub-station. We do not see any conflict between the Orissa Grid Code providing for a meter at the recipient's end for power supplied by the CGP and the CEA Regulation providing for location of meter for the generating station or for "any other system". We do not need to enter into the controversy whether the CEA Regulations actually supercedes the relevant provisions of Orissa Grid Code.

21) Meters are required to assess power transmitted and power received. There are various purposes for metering. Two main purposes are (1) energy auditing and (2) billing. In the present

case, we are concerned with the purpose of billing. The agreement for buying and selling is a commercial agreement. The question as to which meter will provide the data for the purpose of such billing is a matter of agreement between the parties. If the parties agree that the billing be done at Meramundali grid sub-station and this agreement is not in conflict with the CEA Regulations, there is no reason why the agreement should not be given effect to. The Commission worked under the misconception that the CEA Regulation No.7 does not permit metering at the end of the transmission licensee's sub-station. Once the Commission has found that the agreement between the parties was for metering at the Meramundali grid sub-station and the same has not been challenged by NBFAL there is no need to disturb the arrangement simply because CEA Regulations have come into force.

22) The difference in the reading at the end of CGP and at the end of the transmission licensee's sub-station is because of the unusual loss in the line. It was for the parties to consider, while fixing the per-unit-price of electricity, as to who had to bear the cost of the loss. The price at which the power would be purchased by OPTCL/GRIDCO is not in dispute. When, by the letter dated 02.01.06, the price was fixed at Rs.2.20paise per unit, the dedicated feeder had already been established and it was clearly understood that the billing would be as per the meter installed at Meramundali grid sub-station. The only reason why NBFAL wanted the metering at its own premises was because of the vast difference

between the readings at NBFAL premises and the reading at Meramundali grid sub-station. Alarmed by the great difference NBFAL wrote the letter to OPTCL on 20.12.06 as is quoted above, in paragraph 5.

23) It may be mentioned here that NBFAL also made an application to the Commission for seeking a direction from the Commission for taking the reading of the meter at NBFAL's end on the ground that the meter at the Meramundali grid sub-station was defective. This prayer was turned down by the Commission vide a letter dated 26.12.07.

24) We conclude by saying that the parties had agreed for metering of purchase of power by GRIDCO at Meramundali sub-station and that this agreement continued to be in force and to be valid despite the CEA Regulations coming into operation in March, 2006. Hence the impugned order requiring metering at CGP w.e.f 01.04.06 has to be set aside.

25) In view of the above conclusion, we allow the appeal and set aside the order of the Commission dated 19.08.2006 to the extent impugned in this appeal and direct that w.e.f. 01.01.06 onwards for assessing the electricity exported by NBFAL to GRIDCO / OPTCL for billing purposes the meter reading at the Meramundali Grid sub-station only would be valid.

26) The parties are left to bear their own costs.

27) Pronounced in open court on this ***06th day of March, 2009.***

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member