Chhattisgarh State Electricity Regulatory Commission
Civil Lines, G.E. Road, Raipur – 492001
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Petition No.5 of 2007(M)

In the matter of provisional assessment in a case under Section 135 of the Electricity Act

M/s Kankai Steel (P) Ltd .... Petitioner
138, Light Industrial Area, Bhilai.

V/s

Chhattisgarh State Electricity Board .... Respondent
Raipur

Present: S.K. Misra, Chairman
Sarat Chandra, Member

O R D E R
(Passed on 3/4/2007)

The facts are that M/s Kankai Steel Pvt. Ltd., the petitioner, is a consumer of the Chhattisgarh State Electricity Board (CSEB or the Board), the respondent, having taken electricity connection from the latter on 29/07/2005 for its mini-steel plant located in Bhilai. The contract demand sanctioned to the petitioner is 3100 KVA at 33KV. On 4/9/2006 some officers of CSEB inspected the energy meter of the industry. On the basis of this inspection, CSEB has come to the conclusion that there has been a case of theft of electricity and hence they have proceeded against the petitioner under Sec. 135 of the Electricity Act, 2003 (the Act, for short). The Superintending Engineer, CSEB, Durg Circle has made a provisional assessment of the civil liability, for the period June to September, 2006 amounting to Rs.2,13,20,845. This provisional assessment, made on 7/9/2006, was communicated to the petitioner inviting objections, if any, within seven days of the issue of the provisional bill. The petitioner submitted his objection on the provisional assessment on 13/9/2006. The main objections were that there was no case of theft of electricity and that the assessment was based on maximum consumption of a particular month which was not according to the law or the Rules. The CSEB, in their reply dated 19/10/2006, asked the petitioner to deposit one-third amount of the provisional assessment bill if the latter wanted a review of the assessment. This letter demanding one-third amount of the provisional bill issued is said to be in pursuance of clause 11.8(h) of the Chhattisgarh State Electricity Supply Code, 2005 (the Supply Code, for short). The Board refused to hear the petitioner on the provisional assessment till this amount was deposited. This petition has been filed against this stand of CSEB and the procedure followed in provisional assessment, under section 142 & 146 of the Act for contravention of the provisions of the Supply Code by the CSEB. The petitioner has prayed for the following relief:-

(i) Provide reasonable opportunity of hearing to the petitioner as per the provisions of the Supply Code;

(ii) Decide the matter under Sec. 126 of the Act and assess the energy consumption during the disputed period considering the data retrieved from the meter and the losses of the 33KV feeder, production record of petitioner etc. as per the provision of Clause 11.8(d) of the Supply Code;

(iii) Withdraw the minimum charges bill from the date the supply of the petitioner was disconnected;

(iv) Provide compensation for losses to the petitioner due to the illegal act of the Board; and

(v) Penalize the respondent under Sec. 142 & 146 of the Act for contravening the provisions of the Supply Code.

2. The main grounds of the petition are that the T&D losses recorded by the feeder meter during the period June, July, August and Sept. 2006 were within limits and the Board could not have come to a conclusion that there had been a case of theft. Secondly, the provisional assessment has been made on the basis of the highest consumption in the month of January 2006 while there is no such provision in the Supply Code. The assessment should have been made on the basis of the production figures, the consumption pattern of the unit as per the provisions of Clause 11.8(d) of the Supply Code. Thirdly, the procedure laid down in Rule 7 of the Chhattisgarh State Electricity Rules, 2006 (the Rules, for short) and Clause 11.8 of the Supply Code were not followed by the CSEB which mandate that a reasonable opportunity of hearing should be given to the petitioner before the final order of assessment is made. In fact, there are only two main grievances which have been agitated before us. The first that no opportunity was given to the petitioner for hearing before finalizing the provisional assessment and that it is based on the highest consumption in a particular month which is not relevant. The Board in its lengthy and somewhat abstruse reply has only asserted that there is a clear case of theft and that the assessment has been made as per the Supply Code and that hearing on the objection made by the petitioner on the provisional bill has been refused in terms of the provision of Clause 11.8(h), the petitioner having not deposited one-third of the provisional bill. In the hearing of the case also this stand has been reiterated by the Board.

3. The main issues for consideration are (i) whether in making the provisional assessment the procedure laid down in Clause 11.8 of the Supply Code has been followed by the licensee; (ii) whether the licensee has contravened the provisions of the Supply Code as to attract the penal provisions of Sec. 142 and Sec.146. The other prayers of the petitioner that the minimum charges which have been levied by the petitioner after the electric supply to his industry was disconnected as a consequence of the alleged theft of electricity should be withdrawn is not being considered by us as this does not involve violation of any provision of Supply Code and is as per the agreement the consumer has entered into with the CSEB. The first ground relates to whether a theft was committed which is clearly not within purview of this Commission and hence not dealt with.

4. The Supply Code in clause 11.8 gives in detail the action to be taken in a case of theft of electricity under section 135 of the Act. This part lays down the

procedure for dealing with such a case of theft. Sub-clause (d) of Clause 11.8 provides as under:

"(d) In case the electronic meter is installed, the data shall be analyzed to ascertain the period during which the offence continued to be committed, can reasonably be concluded. Facts like consumption pattern, testing and checking of installation during the past period shall also be considered".

In this case the officer of the Board has made the assessment entirely on the basis of the highest consumption recorded in the month of January 2006. This is clearly not in order and is supposed to be in pursuance of some guidelines earlier issued by the Board which can no longer be valid. The provisional assessment should have been made on the basis of the normal energy consumption pattern of the industry over a period of time. Generally the consumption of the past three months prior to the date of alleged theft or six months prior to that would have been a reasonable basis. The assessing officer has clearly erred in arriving at a civil liability on the basis of the highest consumption of one month.

5. The Board has insisted on the deposit of one-third amount of the provisional bill before giving an opportunity of hearing to the petitioner. This is said to have been done in pursuance of the provision of the Clause 11.8(h) of the Supply Code. This provision reads as under:_

"(h) The aggrieved person may file representation, if any, to the authority designated by the licensee who may, after affording a reasonable opportunity of hearing to such person, pass final order of assessment of electricity charges payable within a period of one month from the date of filing of such objections.

The designated authority, on finding prima facie reasons for review of the provisional bill, may allow consumer to deposit one-third amount of the bill before the hearing is commenced. On payment of such amount, the licensee may reconnect the supply pending final assessment".

It is on the basis of the second part of the clause that CSEB has denied an opportunity of hearing to the petitioner because of non-payment of one-third amount of the provisional bill. On the face of it, the stand taken by the Board appears to be in conformity with the provisions of the Supply Code. The provision of a reasonable opportunity of hearing to be given to the aggrieved person before the final order of assessment is contained in the first part of the above provision. However, on reading of the whole provision we feel that the deposit of one-third amount has more to do with reconnection of supply pending final assessment than with commencement of hearing. Denial of a hearing, as in this case, amounts to making the provisional bill final. Even that would have been acceptable if the CSEB had taken into account the objection of the petitioner into account. This does not appear to have been done. In fact, the provisional bill has been prepared on the basis of highest consumption in a month and that has been taken as the end of the matter. Since the petitioner had raised various objections to the provisional bill, denial of hearing to him and not even taking his objections into account for final assessment is a denial of natural justice. It may also be mentioned that the provision is that the designated authority may agree to a review of provisional bill only on finding 'prima facie reasons' for such review. In this case the designated authority has agreed to review and asked the petitioner to

deposit one-third amount of the bill and hence it can be concluded that he found a prima facie reason for review. An opportunity of being beard was required. While we may agree that the provisions of Clause 11.8(h) are not very clearly worded, the intentions are clear enough. Denial of an opportunity being heard is against the principle of natural justice.

6. In the Rules framed by the State Government a provision has been made in Rule 7(v) that "*the person to whom the provisional assessment has been served upon, may file his objections or acceptance or partial acceptance within seven days from the date of receipt of the provisional order. The assessing officer has passed a final order in form-6 after taken into consideration the objections/acceptance/partial acceptance of the person/consumer within one month of the date of the order of provisional assessment. However, the assessing officer, if he considers so necessary may allow personal hearing to the person/consumer assessed*". This provision is contained in Part IV of the Rules which deal with 'assessment of charges for unauthorized use and theft of electricity and payment thereof'. This provision also allows personal hearing to the person if the assessing officer considers it necessary. In fact, this part deals with assessment under section 126 and does not relate to theft of electricity under section 135. The method of assessment of charges payable in case of theft of electricity pending adjudication by the appropriate court has to be included in the Supply Code. This has been specified in the Electricity (Removal of Difficulties) Order, 2005 issued by the Central Government. Therefore, in all such cases the Supply Code shall be applicable. The State Government should be requested to amend the rules suitably to bring them in line with the provisions of the Act.

7. In the light of the above discussion, we feel that a denial of an opportunity of hearing to the petitioner was unjustified and not in keeping with the provisions in the Supply Code. However, we are also of the view that such denial was a result of wrong interpretation of the provisions of the Supply Code and was not deliberate. We, therefore, feel that this act does not merit action under Sec. 142 of the Act. The provisional assessment order is, therefore, set aside and the licensee is directed to give an opportunity of being heard to the petitioner before finalizing the provisional assessment. This should be done within a period of 15 days from the receipt of this order. The assessment also cannot be based on the maximum consumption in a month and should be as per the provisions of the Supply Code. However, as already mentioned the violation of the provisions of Supply Code was not deliberate in this case and, therefore, we do not wish to invoke the penal provision of section 142.

Sd/- Sd/-

Member **Chairman**