



Chhattisgarh State Electricity Regulatory Commission

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Petition No.27 of 2007(M)

In the matter of penalty for violation of the provisions of the Electricity Act, 2003 and the CERC (Licence) Regulations, 2004

Hira Ferro Alloys Ltd., Raipur

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Respondent

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

ORDER

(Passed on 15.2.2008)

The facts of this case are that the Chhattisgarh State Electricity Board (CSEB or the Board, for short) brought it to the notice of the Commission that M/s Hira Ferro Alloys Ltd., Raipur (HFAL) was supplying electricity to its sister companies M/s R.R. Ispat Ltd., and M/s Hira Cement Ltd., both in Raipur, through dedicated 33KV feeders without any legal authority. It was also pointed out by the Board that HFAL had approached the Commission earlier, through a petition [No. 36 of 2005 (M)], to declare the above two so-called sister concerns among others, as captive consumers of the captive power plant (CPP) owned and operated by HFAL, and the Commission vide order dated 5.4.2006, passed in the case, has categorically held that these companies do not meet the requirements of being captive consumers of HFAL's CPP. The supply of electricity thus amounted to distribution of electricity without a distribution licence and constituted a clear violation of section 12 of the Electricity Act, 2003 (the Act hereinafter). On the basis of this information a petition was registered by the Commission suo motu and notice was issued to HFAL on 15.10.2007 to show cause why action under section 142 of the Act should not be taken against the company for distribution of power without a distribution licence which constituted a violation of the provisions of the section 12 of the Act and clause 3 (1) of CERC (Licence) Regulations, 2004. A reference was made in the show cause notice also to petition No.36 of 2005 (M) and the Commission's order in that case of 5.4.2006. The facts of that case were that HFAL which has two industrial units for manufacturing ferro alloys in Raipur was setting up a power plant of 20MW capacity. It was planned that HFAL itself would use 92 MU, which was 66% of the total power produced by the CPP, for its ferro alloys units. HFAL wanted to supply the remaining 47 MU to six sister concerns including Hira Cements Ltd and R.R. Ispat Ltd. The six so-called sister concerns held only 9.04% of the shareholding of HFAL, Hira Cements share being 0.59% while R.R. Ispat's 1.33%. Since these six sister concerns did not qualify to be captive consumers under the provisions of rule 3 of the Electricity Rules, 2005 ('the Rules' hereinafter), the petition was rejected and the Commission by an order passed on 5.4.2006 declined to declare the six so-

called sister concerns including Hira Cements Ltd and R.R. Ispat Ltd., as captive consumers of HFAL's CPP. The respondent has not challenged this order in a superior forum and the order has thus become final. As per the provisions of section 9 of the Act the petitioner has no right to supply power to any consumer including the two so-called sister concerns except subject to regulations made under sub-section 2 of section 42 of the Act. In other words, the respondent could supply power to the two sister concerns only either by obtaining open access from CSEB and paying the open access charges or by obtaining distribution licence.

2. The respondent in his reply dated 3.12.2007 has not denied the fact of supply of power to its sister concerns. He has, however, contended that the consumption by the sister concerns would qualify to be treated as captive consumption within the meaning of rule 3 of the Rules aforementioned. As per this rule the requirement of a captive generating plant is that not less than 26% of the ownership should be held by the captive user(s), and not less than 51% of the aggregate electricity generated in such plant should be consumed for the captive use. As per explanation (1)(c) in this section "Ownership" in case of a company is the ownership in relation to a CPP. It has been contended that the respondent had raised an additional equity of Rs.14 crores for setting up of this CPP in the year 2005, as stipulated by the bankers while providing credit facilities to him for setting up the CPP. For raising the above capital, 20 lakh shares were issued of which M/s R.R. Ispat Ltd and M/s Shree Hira Exim Ltd (proprietor of M/s Hira Cement) hold 3,94,000 and 1,30,000 shares respectively which constitute 26.20% of the total equity raised for the specific purpose of setting up of the CPP. The respondent has submitted a copy of the certificate of the Company Secretary to this effect. It has been claimed that the two sister concerns are captive consumers and the power plant also CPP in relation to them, as they hold 26.20% of the ownership by virtue of holding additional equity raised for the CPP to that extent. It is, therefore, claimed by the respondent that he has not violated section 12 of the Act.

3. It is difficult to agree with the above contention of the respondent. It is very clear from explanation (1)(c) of rule 3 (2) of the Rules that 'ownership' in relation to a power plant set up by a company shall mean the equity share capital with voting rights. A power plant itself is not a body corporate and therefore there can be no equity shares of a power plant. The purpose of the rule is clearly to lay down that in case of a company setting up a CPP, ownership of the latter has to be determined, for the limited purpose of use of power of that plant, on the basis of the pattern of shareholding in the company. There can be no other interpretation. Such ownership cannot be determined on the basis of capital raised by the company for setting up of the CPP, but the total share capital of the company. In any case, it is futile to go into this issue in this case at this stage, as it has already been held by this Commission in petition No.36 of 2005(M) that HFAL's CPP cannot be treated as captive to these two sister concerns. Since the power plant supplying power to Hira Cement Ltd., and R.R. Ispat Ltd is not a CPP in relation to that it is a case of a generating station supplying power to two consumers without any legal authority. As per the provisions of section 12 of the Act no person shall distribute electricity unless he is authorized to do so by a licence issued under Section 14 or is exempt from under section 13. It is not the case of respondent that he is exempt from taking a licence under section 13. It is, therefore, a case of distribution of electricity without a licence which is violation of section 12 of the Act and Clause 3(1) of the CSERC (Licence)

Regulation, 2004. This attracts punishment under the provisions of section 142 of the Act which provides as under:

“142. Punishment for non-compliance of directions by Appropriate Commission – In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction”.

4. As discussed above, the respondent has failed to show any satisfactory reply why action should not be taken against him under the above provisions of the Act in reply to the show cause notice. In view of this position the Commission imposes a penalty of Rs. one lakh on the respondent under section 142 of the Act. The respondent shall pay the penalty within seven days of receipt of this order. During hearing the respondent has pleaded that Hira Cements and R.R. Ispat, the two concerned industries, have both discontinued electricity supply from CSEB which they were availing earlier. Hence immediate stoppage of supply of electricity will have the effect of closing down these two industries. This cannot be allowed. Therefore, in consideration of the circumstances of the case while we order that the respondent should cease supply of electricity to these two industries, we allow one months' time to the respondents to secure supply of electricity to these two industries. In case of default, the respondent shall pay Rs.5000/- penalty for every single day during which the illegal supply to the two industries continues thereafter.

5. Copy of this order be given to the respondent as well as to the CSEB.

Sd/-
Member

Sd/-
Chairman