



Chhattisgarh State Electricity Regulatory Commission
Civil Lines, G.E. Road, Raipur – 492001
Tel: 0771-4073555, Fax-4073553

Petition No. 29 & 30 of 2006(M)

In the matter of dispute regarding arranging charges.

1. M/s Ultratech Cement Ltd. Raipur
2. M/s Grasim Cement Ltd. Raipur - Petitioners

V/s.

Chhattisgarh State Electricity Board, Raipur - Respondent

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

ORDER

(Passed on 02/12/2006)

M/s Ultratech Cement Limited (formerly, Larsen & Toubro Limited), a company which has a cement plant at Hirmi, District Raipur, has submitted a petition [Petition No.30 of 2006(M)] under sections 43 and 46 of the Electricity Act, 2003 (the Act for short) for refund of supply arranging charges to the tune of Rs.71.50 lakhs levied by the Chhattisgarh State Electricity Board (CSEB for short) for additional load, on the grounds that the same had already been paid in the past. On similar grounds and praying for similar relief, M/s Grasim Cement Limited has also submitted a petition [Petition No.29 of 2006(M)] praying for refund of supply arranging charges of Rs.32.50 lakhs paid under protest to CSEB for enhancement of contract demand. As already mentioned, the two cases being similar in nature and certain other facts being common to both, these are being considered together and this order is being passed as common to both.

2. The facts of the case of M/s Ultratech Cement Limited [petition No. 30 of 2006 (M)] are that the petitioner was a consumer of Madhya Pradesh Electricity Board (the predecessor of CSEB, in undivided M.P) with a contract demand of 40 MVA in the name of M/s Larsen and Toubro Limited with effect from 01-04-1992. The Board agreed to provide connectivity to its cement plant from the Bhatapara 132 KV S/s and accordingly he was required to pay the entire cost of 132 KV DCSS line of 25 Km. length along with the cost of 132 KV feeder bay at Bhatapara S/s, which came to Rs. 220 lakhs. However, subsequently, the MPEB changed its plan and proposed to erect a 220 KV S/s at a place named Suhela and required the petitioner to bear the cost of 220 KV line of 16 Km. length from Bhatapara to Suhela and the 132 DCSS line of 12 Km. length from Suhela to the petitioner's plant. The revised cost

came to Rs. 251.13 lakhs. The petitioner paid both the initial amount of Rs.220 lakhs and balance Rs. 31.13 lakhs on 18-09-1993 along with Security Deposit of Rs. 193.5 lakhs. These facts are not disputed.

M/s Grasim Cement Limited also had secured connectivity of its cement plant for 24 MVA on 132 KV near about the same time. Initially, M/s Grasim Cement Limited was also asked to pay for the cost of 132 KV line from Bhatapara to Rawan (length of 25 Km.) being Rs.220 lakhs, which was subsequently changed with the new proposal of setting up of 220 KV S/s at Suhela. The company paid for the cost of laying 220 KV line from Bhatapara to Suhela (17.13 Km.) being Rs. 109.52 lakhs and the cost of 132 KV line from Suhela to its cement plant at Rawan (9.065 Km) being Rs. 98.97 lakhs. In fact, the power connectivity to the two cement plants was taken up together and hence the cost of supply of electricity to the cement plants was to an extent shared by the two companies. M/s Ultratech Cement Limited reduced its contract demand from 40 to 29 MVA with effect from 16-06-1996, to 23 MVA from 16-07-1997. The request for reduction in contract demand from time to time was approved by MPEB/CSEB and the company entered into supplementary agreement with the Board for such reduction. The CSEB offered a concessional package in tariff for supply of electricity to cement plants over a period of two years with effect from 10-04-2002. As a part of the concessional package, supply-arranging charges were waived. The petitioner enhanced his contract demand from 23 to 38 MVA on 22-04-2002 and subsequently to 40 MVA on 07-5-2002. The contract demand was reduced from 40 to 23 MVA on 10-04-2004 when the concessional package was withdrawn and further to 14MVA with effect from 14/06/2005. Apparently when the market started looking up the petitioner applied for enhancement of contract demand from 14 to 25 MVA to CSEB on 20-04-2006 CSEB agreed to enhance CD applied for subject to the petitioner paying supply arranging charges to the tune of Rs.71.50 lakhs @ Rs. 650 per KVA for the additional load applied for. The petitioner protested that it had already paid supply arranging charges up to 40 MVA earlier (1993) and was not liable to pay such charges again. This was overruled by the CSEB and the petitioner paid Rs. 71.50 lakhs under protest. The petition is for refund of this amount.

Similarly, M/s Grasim Cement Ltd which had a sanctioned load of 24 MVA reduced its contract demand to 16 MVA on 14-09-2005 and to 13 MVA on 13-9-2005. The contract demand was sought to be enhanced from existing 13 MVA to 18 MVA with effect from 16-06-2006 under similar circumstance as was in the first petition. The company had to pay Rs.32.50 lakhs as supply arranging charges for the enhanced load. This has also been deposited under protest and the petition is for refund of that amount.

3. The main grounds of both the petitions are that they had paid the full charges for supply of electricity to them when their cement plants were commissioned in 1993. For enhancement of load up to 25 MVA and 18 MVA in the two cases respectively, no additional infrastructure is required to be created by the respondent CSEB. It has used the same infrastructure and the same supply lines which have been paid for by the petitioners initially, for enhancement of their contract demand. In both the cases, the enhancement is below the level of load connectivity initially sanctioned for which necessary supply arranging charges have been paid. Both have relied on this commission's finding in three other petitions No.9, No.12 and

No.18 of 2006(M) in which we have passed common orders on 23-05-2006 to the effect that where there is no additional expenditure and the supply related initial expenditure involved has already been paid once, there is no justification for asking the consumer to meet such expenditure again. Per contra, on behalf of the Board, certain legal and other averments have been made to justify recovery of supply arranging charges on enhancement of load. First, the Board has pleaded (in the case of M/s Grasim Cement Limited, which, however, is applicable to both) that CSEB has already invested Rs.535 lakhs for capacity addition at 220 KV system of EHV S/s at Bhatapara to meet the growing demand in the associated area. The huge investments made are never fully paid for by the consumers and also that the infrastructure once created to meet the requirement of a consumer at a particular point of time, can not be asked to be maintained to meet his future demands. The CSEB has also raised certain legal issues in the Ultratech Cement Co. regarding the responsibilities of a distribution licensee towards a consumer. In this case, if not in the other, CSEB has also raised the issue of jurisdiction of the Commission to hear the two petitions which according to them relate to consumer grievances.

4. There is no dispute regarding both the petitioners having paid the total cost of their supply line some years back for supply of electricity. The only dispute is regarding whether such charges are payable again for restoration of load also, if the load has been reduced at any time by the consumer while he continues to be a consumer of CSEB. The present request for enhancement of load does not reach the limit upto which connectivity was initially provided. It is also not the claim of CSEB that they had to create additional infrastructure for what is essentially in the nature of restoration of demand, short of the contract demand initially availed, and paid for, by the two consumers. We had occasion to examine the relevant provisions of the Chhattisgarh State Electricity Supply Code, 2005 regarding payment of supply arranging charges in the case of M/s Raghuvver Ferro Alloys Limited and others (Petition Nos. 9, 12 and 18 of 2006(M)). In the order passed on 23-05-2006 in that case we had examined clauses 7.4 and 7.6 of the Supply Code. We had come to the conclusion that while payment of supply arranging charges for enhancement of load is required, but that this provision is applicable only to enhancement of load of a consumer who presently does not have a connection to service the enhanced load sought.

5. However, the matter regarding jurisdiction needs to be discussed first before we examine the merits of the two cases. As we have already mentioned, both the petitions rely on this Commission's orders in the Raghuvver Ferro Alloys, etc. case. The respondent CSEB had gone on appeal against the Commission's orders in that case before the Appellate Tribunal for Electricity. The Hon'ble Tribunal vide their judgment dated 28-11-06, passed in appeal No.125, 126 and 127 of 2006, have held that the "matter involved is excessive demand of supply arranging charges and it is a billing dispute for which remedy should be sought in the appropriate forum established under section 42(5) and section 42 (6)" They have also held that "the Commission has no jurisdiction or authority to adjudicate on the consumers' dispute, viz, alleged excessive demand of supply arranging charges by the appellant Board". Vide the above judgment, the orders dated 23-5-06 passed by this Commission in Raghuvver Ferro Alloys and other two cases have been set aside while giving "liberty to each one of the consumers to work out their remedies before the competent forums". The matter at issue in the two cases under consideration is

similar to the Raghuvveer Ferro Alloys case and the other two cases, the orders passed in which have been set aside on the ground of lack of jurisdiction of this Commission.

6. In view of the above ruling of the Appellate Tribunal we decline to go into the merits of the above two cases under consideration and decline to accept the petitions. The petitioners may approach the forum set up by the Commission for redressal of consumers' grievances under the provisions by the CERC (Redressal of grievances of consumers and establishment of Forum and Electricity Ombudsman) Regulation, 2004, read with section 42(5) of the Act. They can also seek remedies available to them in the Consumers' Protection Act, 1986 to which also they are entitled as per the provisions of the section 42 (8).

7. The petitions are accordingly rejected.

Sd/-
Member

Sd/-
Chairman

True Copy

(Ajay Srivastava)
Dy. Secretary