



Chhattisgarh State Electricity Regulatory Commission
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Petition No. 40 of 2017 (M)

In the matter of -

“Clarification petition under Section 86 (1)(k) of Electricity Act, 2003 ”.

Shri Suryakant Gupta

Proprietor M/s Rajaram Maize Products

Solar Power Division, Rajnandgaon ... Petitioner

V / s

M/s Chhattisgarh State Power Distribution ... Respondent 1
Company Ltd., Daganiya, Raipur

M/s Chhattisgarh State Power Transmission ... Respondent 2
Company Ltd., Daganiya, Raipur

**Present: Narayan Singh, Chairman
Arun Kumar Sharma, Member**

ORDER ON ADMISSION
(November 14, 2017)

Shri Suryakant Gupta, proprietor Rajaram Maize Products, Solar Power Division, (hereafter referred to as Petitioner) has submitted this petition against M/s Chhattisgarh State Power Distribution Company Ltd. (CSPDCL), and M/s Chhattisgarh State Power Transmission Company Ltd. (CSPTCL).

2. According to petitioner, order dated 20.07.2016 issued by the Commission in petition no.12 of 2016 was not being properly implemented by CSPDCL, therefore Petitioner again filed petition no. 61 of 2016 under section 142 of the Electricity Act 2003, on which, the Commission issued detailed order on 03.03.2017. Still, the respondent is not executing the Commission's order, therefore this petition was filed.

3. Petitioner submitted that their plant started producing solar electricity from 23.01.2016 and from the same day electricity is being

supplied to the grid, therefore cause of action has been started from the date 23.01.2016 only, the respondent was bound to obey the order from this date only.

4. Against the three months banking facilities available as per prevailing regulations, the Commission in its order dated 03.03.2017 specified for adjusting the banked energy every month. Petitioner submitted that there will be difficulty in adjustment every month due to less generation in rainy and winter season. Therefore, it is necessary that banking adjustment should be done every year instead of every month.

5. Petitioner further submitted that they have established plant for captive use/third party sale. Minimum 51% of the generated electricity has to be used for captive use by the petitioner which is also clearly mentioned in CSPDCL letter dated 29.11.2016. In CERC Regulation 2003, there is clear provision for solar generators having rights for third party sale and captive use. In the order dated 03.03.2017 there is no clear mention for third party sale, which is necessary to mention for avoiding possible disputes in future.

6. Petitioner further submitted that in the Commission's order dated 03.03.2017, it is mentioned that solar generators below 5 MW are exempted from Deviation Settlement Mechanism (DSM), and therefore there is no need of scheduling, but CSPTCL is forcing to give scheduling every week.

7. Relief sought by the petitioner are as follows:-

- i. That solar production has started from 23.01.2016, the date of adjustment should be considered from the date of start of production.
- ii. That the facility of banking of electricity should be per year instead of per month.
- iii. That the remaining electricity after captive consumption should be allowed for third party sale.
- iv. That CSPTCL is asking for scheduling every week, so it is necessary to advice them that, because of exemption from DSM, there is no need of scheduling.
- v. That the petitioner is facing financial loss due to non payment or adjustment of amount by the respondent for the unit 7185400 from date 01.03.2016 to 28.02.2017 for their generation of solar electricity supplied to the grid. Therefore for the said unit respondents are bound

to pay/adjust the amount, therefore respondent should be advised in this matter.

Initial Objection by CSPDCL:

CSPDCL in its objection has submitted that though the petition is for clarification of the Order dated 03.03.2017, new prayers such as facility of banking and third party sale has been added to this petition, which is not maintainable and is the violation of principle of Res Judicata.

CSPDCL further submitted that according to section-11 of the civil procedure code, registering case in the same subject again and again between the same parties, is completely prohibited under the principle of Res Judicata and requested to dismiss the present petition under the principle of Res Judicata.

Preliminary Objection by CSPTCL:

CSPTCL in its reply submitted that any clarification under the Electricity Act is not maintainable because section 86(1)(k) of the Electricity Act there is no specific function which mandates the Commission on the for clarification in the petition.

CSPTCL also submitted that it was not party in the original petition no. 61/2016 in which the parties were Suryakant Gupta and Chhattisgarh State Power Distribution Co. Ltd. only. Now the petitioner has made this respondent as a party in this case unnecessarily therefore this respondent is neither a proper party nor a necessary party in the case, which amounts to mis-joinder of parties and mis-joinder of cause of action. Thus, the petition be also be dismissed in this ground and the petitioner is liable to struck off the name of this respondent from the cause title of the petition.

Commission's view and Order:

8. The Commission is of the view that the issues raised in the present petition have already been decided in the Commission's Order dated 03.03.2017 in P.No.61 of 2016 after due deliberations. In the Order dated 03.03.2017, the Commission held as follows;

"XXXXXXXXX

As the modality of settlement of energy and demand of this transaction has been finalized in this Order, it doesn't appear proper to penalize and imposed section 142 of the Act at this stage as pleaded by the petitioner.

XXXXXXXXXXXXX."

The Commission while issuing the order dated 03.03.2017 has relaxed various provisions of the regulations/orders in the spirit of the Act.

Therefore, the cause of action will be from the date 03.03.2017, when the Commission issued the Order in P.No.61 of 2016.

Accordingly, the Commission didn't find any merit in the case and present petition is dismissed.

We order accordingly.

Sd/-
(Arun Kumar Sharma)
Member

Sd/-
(Narayan Singh)
Chairman