



Chhattisgarh State Electricity Regulatory Commission

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Petition no. 16/2009(M)

M/s. Aryan Coal Benefications. Pvt. Ltd. Petitioner

V/s.

Chhattisgarh Power Distribution Company Ltd. Respondent

ORDER (Passed on 25.5.2009)

This is an application under section 94(1)(f) of the Electricity Act, 2003 (hereinafter, the Act) read with Regulation 43(1) of the Conduct of Business Regulations, 2004 of this Commission for review of the order passed by this Commission on 23.1.2009, in suo motu petition No.10 of 2008(M) and petition No.11 of 2008(M). The facts of this case are that M/s Aryan Coal Benefications Pvt. Ltd., the petitioner company, has set up a 30 MW generating plant based on coal washery rejects in Korba District. The company obtained permission from the State Government under section 68 of the Act and has laid 33 KV line from the plant to its coal washery located 7 kms away. Through this line the company is supplying power from the generating plant to its two coal washery units to the extent of 5 MW. Admittedly, the generating plant is not a captive plant within the meaning of section 3(8) and section 9 of the Act. Since there is no provision in the Act for supply of power by a generator to a consumer, except for a captive generating plant supplying power to a captive consumer, or having obtained a distribution licence under section 14 of the Act, the Commission took suo motu cognizance and registered a case under section 142 of the Act for violation of the provisions of the Act. In the meantime, the company also submitted an application before the Commission for permission to supply power to its coal washeries through its own dedicated transmission line under section 10(2) of the Act and Clause 11(6) of the Commission's Intra-State Open Access Regulations of 2005, as amended in July, 2007, with a prayer that the Commission allow the petitioner to continue to supply power to the coal washeries by paying cross-subsidy surcharge as applicable to HT consumer, as per the prevailing tariff order of the Commission. Clause 11(6)(b) of the open access Regulations, aforementioned, provide that "cross-subsidy surcharge shall be payable by a consumer who receives supply of electricity from a person other than the distribution licensee in whose area of supply he is located irrespective of whether he avails such supply through transmission/ distribution network of the Board/ licensee or not. Since the matter of the two petitions was the same the Commission decided to hear the petitions together. In course of the proceedings of petition No.11, instituted the basis of the application of the petitioner, the petitioner submitted on 5.9.2008 that the case be kept in abeyance in view of the suo motu proceedings initiated by the Commission in petition No.10. In the order passed by the Commission on 23.1.2009 there is a reference of case No.11 of 2008(M) also. Since a clear decision was given in case No.10 we decided that both case Nos. 10 & 11 were disposed of by this order, the matter of both being the same.

2. This review petition has been submitted on the ground that reference to disposal of the petition No.11 of 2008(M) is an error apparent on the face of the record, on the ground that the case should have been disposed of as not pressed by the petitioner. It has been stated that when the matter came up for hearing on 2.3.2009, the petitioner had submitted that he did not want to press the petition. The other ground for review is that the impugned order directs that the petitioner should seek open access from the licensee under section 42 of the Act and the Open Access Regulations of the Commission which is not required in this case because the petitioner wants to supply his own power to his own industries. The second ground is regarding merits of the order of this Commission which can be challenged only through appeal and not in this review petition. As regards the first ground we have gone through the proceedings of 3.1.2009 recorded in petition No.10. There is no record of the petitioner's learned counsel having specifically sought the permission of the Commission for closure of the other petition (petition No.11) as not pressed. There is no written submission in this regard on record also. Since no such plea was made by the petitioner, there is no apparent error in the impugned order. Since the matter of both the petitions was same the impugned order has been passed to cover the other petition also.

3. There being no error apparent on the face of the order there is no ground for review of the impugned order. The review application is accordingly rejected.

Sd/-
Member

Sd/-
Chairman