



Chhattisgarh State Electricity Regulatory Commission

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In the matter related to order dated 27.06.09 passed in petition No. 29 of 2008 (M)

Petition No.47 of 2009 (D)

Chhattisgarh State Power Distribution Company Ltd.
Raipur.

... Petitioner

V/s

M/s Bharat Aluminium Company Ltd.
Korba

.... Respondent

Petition No.48 of 2009 (M)

M/s Bharat Aluminium Company Ltd.
Korba

.... Petitioner

V/s

Chhattisgarh State Power Distribution Company Ltd.
Raipur

..... Respondent

Present: Manoj Dey, Chairman
B.K. Sharma, Member

Counsel: Prashanto Sen for petitioner of petition No. 48 of 2009

ORDER **(Passed on 28.10.09)**

Petition No.47 of 2009 (D)

This is a petition filed by the Chhattisgarh State Power Distribution Company Ltd. (CSPDCL, for short), successor to the Chhattisgarh State Electricity Board (CSEB, for short) under section 94(1)(f) of the Electricity Act, 2003 ('the Act', for short) with Regulations 43 (1) of the CSERC (Conduct of business) Regulations, 2004 of this Commission for review of the order passed on 27.06.09 in petition No. 29 of 2008 (M) in the matter of dispute between M/s Bharat Aluminium Company Ltd. (M/s BALCO, for short), a captive power plant and CSPDCL (successor company of Chhattisgarh State Electricity Board, CSEB, for short) regarding billing of power procured by the latter from the former. The fact of the case is that M/s BALCO a captive power plant of 810 MW capacity, operates primarily for meeting the requirement of its Aluminium manufacturing plant at Korba offered to sell its surplus varying quantum of power based on availability to the CSEB from 40 MW to 180 MW

for the period of 1 year. The CSEB accepted the proposal and respondent supplied the power details as follows:-

CSEB order No.	Quantum of Power	Period of Supply
3743 dated 19.12.05	60 MW	20.12.05 to 15.01.06
4137 dated 16.01.06	100 MW	16.01.06 to 31.01.06
4309 dated 31.01.06	150 MW	01.02.06 to 14.03.06
4832 dated 14.03.06	180 MW	15.03.06 to 27.05.06
---	200 MW	27.05.06 to 22.06.06
---	75 MW	23.06.06 to 30.06.06
---	180 MW	01.07.06 and onwards

M/s BALCO and CSEB entered into power purchase agreement (PPA, in short) on 23.05.06 which was made effective retrospectively from 20.12.05 indicating the Load Factor =

$$\frac{\text{sum of daily injected eligible units in a month}}{\text{sum of daily scheduled units in a month}}$$

The bills were raised by BALCO and payment were made by CSEB based on the Load Factor (LF, for short) arrived as per formula mentioned above as incorporated in the power purchase agreement between them from Dec'05 till Sep' 06, and suddenly on 14.11.06, CSEB claimed that it had over-paid the BALCO through the wrong definition of LF while the LF should have been calculated as per the definition of the terms given in Chhattisgarh State Electricity Supply Code, 2005 (Supply Code, for short) notified by this Commission. The CSEB therefore started deducting the so-called excess payment and thus a dispute had arisen between the BALCO, a generator and the CSEB, a deemed licensee and the BALCO filed a petition to this Commission under section 86 (1)(f) of the Act, which was registered as petition No. 29 of 2008 (M).

2. While going through the case it is observed that the dispute has arisen mainly in respect of the definition and interpretation of LF. M/s BALCO claimed that invoices have been raised by it in respect of the power supplied to CSEB on the basis of terms of agreement including the formula for LF calculation given in the agreement itself. We had gone through the submissions of M/s BALCO and CSEB and pleadings of their counsels in details and observed that the Supply Code issued by this Commission is applicable for supply to the consumers and hence Supply Code is not applicable in this case. There is nothing in PPA which is against the provision of Act or Regulations. The power purchase agreement has been entered into by the two parties with open eyes. Thus, the LF formula as given in the agreement cannot be legally faulted, it is also not contrary to any provision of the law or rules or Regulations of this Commission. Accordingly, this Commission hold that bills raised by M/s BALCO for supply of electricity to the then CSEB as per terms and conditions of the agreement between the two parties must be treated as valid. Therefore, the CSPDCL, the successor company of CSEB was directed to make payment to M/s BALCO on the basis of bills raised for supply of power and the amount adjusted from the bills raised by M/s BALCO towards so-called over payment be returned to M/s BALCO in three equal monthly instalments which has caused this review petition by CSPDCL.

3. M/s CSPDCL, in this review petition has submitted that the waiver of supplementary bills on account of corrected LF in respect of M/s BALCO is not legitimate because many of the facts and grounds on which the supplementary bills were raised have not reflected in the judgement. It is further stated that M/s BALCO have offered to supply fixed quantum of power to CSEB in phased manner at different periods of agreement which was accepted by the CSEB. The universally adopted formula for the monthly LF is:

$$\text{Load Factor} = \frac{\text{Units supplied during the month}}{\text{Contracted quantum of power} \times 24 \text{ hrs} \times \text{No. of days in a month}}$$

It is further submitted in review petition that, since, the formula for the LF as per agreement entered into with M/s BALCO is not in accordance with the universally adopted formula, hence applicability of separate definition/formula for calculation of LF in case of M/s BALCO shall not be lawful and would lead to discrimination and complications. The petitioner has thus prayed to review the order passed on dated 27.06.09 regarding exemption of the over payment of the amount raised on account of corrected LF by considering applicability of universally adopted LF formula in case of power purchases by M/s BALCO also.

4. We have gone through the review petition and pleading of the petitioner and our order passed on dated 27.06.09 on petition No. 29 of 2008 (M). In the order dated 27.06.09, we have specifically mentioned that during the course of arguments the learned counsels of both the parties have conceded that the provision of Supply Code are not applicable to this agreement in question. The learned counsels of both the parties also agreed that there is no illegality in the agreement executed between the two parties and thus we had in the view that the LF formula which is given in the agreement is not open to any question. The petitioner in this review petition have mentioned that the reference of Supply Code was made to substantiate the authenticity of universal definition of LF and not to co-relate the power purchase case of M/s BALCO as per the Supply Code. They do agree that Supply Code deals with the provisions for supply of power by the licensee to the consumers but the definition of LF would not change either it is Supply Code or any other defined documents. We also agreed that the general definition for average monthly Load Factor=

$$\frac{\text{Units supplied during the month}}{\text{Contracted quantum of power} \times 24 \text{ hrs} \times \text{No. of days in a month}}$$

but this formula is valid only when the contracted quantum of power remained constant for through out the period for which the LF is being calculated i.e. for the entire month in this case. Whereas, in case of power supply by the BALCO to CSEB the contracted power did not remain constant through out the month but it varied even during the month based on availability as can be seen from the actual quantum of power offered by BALCO, accepted and availed by the CSEB and hence in such case a change/modification in the formula suiting to such situation to arrive the monthly average LF needs to be applied, which has been done in this case by considering LF based on scheduled power than the contracted power as the billing and payment is to be done on monthly basis. The main basis of review petition is still in respect of definition and interpretation of LF which we have already dealt in our order dated 27.06.09 so also dealing in this order. We, therefore, still are of the view

that there is no illegality in the agreement executed between M/s BALCO and CSEB related to our order dated 27.06.09.

5. For review of the order issued by this Commission, the review application must need the requirements of the provisions of the order XLVII, rule 1 of the Code of Civil Procedure as per which the points for considerations are: (i) whether there has been some mistake or error apparent on the face of the record in the impugned order of the Commission, (ii) whether there are other sufficient reasons for review of the order. The petitioner in this case has not come up with any mistake or error apparent on the face of the record or any other sufficient valid reasons including any other fact that was not in the knowledge of the petitioner earlier which may affect the decision of the order to justify the petition for review. They have also not come up with any other facts or ground mentioned in their petition which have not reflected in judgement.

6. In view of the above discussion, we hold that there is no merit in the review petition and it is accordingly rejected.

Petition No.48 of 2009 (M)

Simultaneously with review petition by the CSPDCL in impugned order dated 27.06.08 of this Commission M/s Bharat Aluminium Company Ltd. (M/s BALCO, for short) also filed a complaint under section 142 read with section 149 of the Electricity Act, 2003 for non-compliance of the directives issued in the order dated 27.06.09 in the petition No. 29 of 2008 (M) of this Commission by the respondent company i.e. Chhattisgarh State Power Distribution Company Ltd. (CSPDCL, for short). The petitioner has submitted that in the order passed on dated 27.06.09 this Commission has directed the respondent company to make the payment to the petitioner company on the basis of bills raised for supply of power and also to return the amount which was adjusted from the bills raised by the petitioner in three equal monthly instalments, but this has not been complied yet. The petitioner has thus prayed to pass necessary directions against the respondent company under section 142 of the Act and to pass an order/directions as may deem fit in the interest of justice. The respondent of this petition in its reply submitted that after going through the impugned order dated 27.06.09 of this Commission the filing of review petition was considered necessary by the respondent CSPDCL, accordingly, the review petition has been filed on 04.09.09 before the Commission. Since, the adjudication of review petition is still pending before this Commission the compliance of impugned order has been differed till the final order is passed by this Commission under the review petition. Since this case is related with the review petition No. 47 of 2009, we heard both the cases simultaneously.

2. The learned counsel of the petitioner pleaded that merely submission of review petition does not entitle the respondent to not to follow the directive of the Commission. The respondent has approached to the Commission with review application after more than two months period by which time payment of two instalments have already become due. Thus, CSPDCL have clearly violated the directives of the Commission. In case of intending for review petition the CSPDCL would have approached the Commission before payment of first instalment would

have become due and would have obtained stay order from the Commission. The learned counsel further pleaded that they are actually not intending for taking any penal action against CSPDCL, but to make the payment to BALCO as per directive of the Commission order passed on dated 27.06.09 in petition No. 29 of 2008. He also agreed that payment in three equal monthly instalments as per order dated 27.06.09 will serve the purpose.

3. In the impugned order dated 27.06.09 we have directed to the respondent CSEB to make payment to the petitioner company on the basis of the bills raised for supply of the power and the amount already adjusted from the bills raised by M/s BALCO towards the so-called over payment be returned to the petitioner in three equal monthly instalments. The review petition against the impugned order was filed by CSPDCL on 04.09.09 after more than two months of the order without payment of a single monthly instalment which is clear violation of the directives of the Commission. Since, we have observed that CSPDCL has not paid a single monthly instalment to M/s BALCO and submitted review petition after a period of more than two months which has also been rejected by this Commission in the decision of review petition No. 47 of 2009(D) hence we again direct the respondent (CSPDCL) to return the amount adjusted by them from the bills raised by the petitioner towards so-called over payment in three equal monthly instalments positively. Since the learned counsel of petitioner company is not pressing for penal action against respondent company, we are not taking any penal action against respondent company, but we express our displeasure on non-compliance of our directive and advise the respondent company to ensure proper and timely compliance of the directive of the Commission in future.

We order accordingly and dispose this petition.

**Sd/-
Member**

**Sd/-
Chairman**

True Copy

**(N.K. Rupwani)
Seretary**