



## Chhattisgarh State Electricity Regulatory Commission

Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)

Ph.0771-4048788, Fax: 4073553

Website : [www.cserc.gov.in](http://www.cserc.gov.in), E-mail : [cserc.sec.cg@nic.in](mailto:cserc.sec.cg@nic.in)

### **In the matter of supplementary demand towards change of tariff from HV-8 to HV-6 temporary.**

#### **Petition No.49 of 2009 (D)**

M/s Lanco Amarkantak Power Pvt. Ltd.  
Village – Pathadi, District-Korba

.... Petitioner

V/s

1. Chhattisgarh State Power Holding Company Ltd.  
(Successor company of Chhattisgarh State Electricity Board), Raipur and

2. Chhattisgarh State Power Distribution Company Ltd.  
(Successor company of Chhattisgarh State Electricity Board), Raipur

.... Respondents

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

### **ORDER**

**(Passed on 30.03.2010)**

M/s Lanco Amarkantak Power Pvt. Ltd. (petitioner, for short) filed a petition against Chhattisgarh State Power Holding Company Ltd. (CSPHCL, for short) and Chhattisgarh State Power Distribution Company Ltd. (CSPDCL, for short). The history of the case is that the petitioner is a generating company which is in the process of setting up of 2X300 MW power plant at village-Pathadi, Champa Road, Korba, availed connection on 33KV for construction work for 200 KVA from 31.05.06 which was increased to 500 KVA from 01.10.06 and then increased to 980 KVA from 28.02.07. Subsequently, the petitioner availed a separate connection for 20 MVA start-up power on 400KV on 10.05.08. Both the connections were checked on 18.03.09 by the vigilance team and an inspection report was prepared. Subsequently, the petitioner received a supplementary bill for Rs.9,63,33,756/- from respondent No. 1 on dated 27.08.09 pertaining to the period from May 08 to April 09 without details of the bill, except mentioning the reason that the petitioner is to be classified at HV-6 temporary category instead of HV-8. The petitioner enquired the matter with the respondents but on account of having not received response they preferred a petition before this Commission. The petitioner in its petition has pleaded that issuance of supplementary bill by the respondent No.1, who is not the distribution licensee,

is illegal and without authority. The Holding Company cannot take over the licensed business and activities of Distribution Company. It is also stated that failure to give notice or show cause before changing the category, violates the principles of natural justice. It is also pleaded that the respondent has given no reason to explain for such unilateral change of tariff category. The petitioner, therefore, prayed; (a) to declare that the respondents do not have the ability to either raise the supplementary bill dated 27.08.09 or unilaterally change the petitioner's tariff category in the said supplementary bill from HV-8 to HV-6 temporary, (b) to quash the supplementary bill dated 27.08.09 being illegal and without authority.

2. The petitioner submitted another application for ex-parte ad interim stay on recovery of Rs. 9,63,33,756/- raised by the respondent No. 1 as supplementary bill, as such the petitioner has not been noticed or show cause issued before changing the category, which directly violates the principles of natural justice and as such goes to the very root of the matter. During the hearings, the respondents confirmed that notice/opportunity was not given to the petitioner before raising supplementary bill. The respondent has also nothing to say on the point of interim stay. Considering the above and observing the balance of convenience in favour of petitioner we granted stay on recovery of bill amounting to Rs.9,63,33,756/- till further order.

3. The CSPHCL, respondent No. 1 submitted their reply stating that both the respondent No. 1 and 2 are successor companies to the CSEB. As per item (K) of part II of schedule V of the State Government notification No. F-1-8/2008/13/1 dated 19.12.08, the Holding Company has been directed to deal with the common services of all the companies till final allocation to different companies are made. Accordingly, CSPHCL has been raising the bills on every HT consumers through its accounting units headed by Sr. Accounts officer/Regional Accounts officer, on behalf of CSPDCL. Thus, the petitioner's contention that CSPHCL cannot issue a supplementary bill is denied. It is further stated by respondent No.1 that all the correspondences relating to sale of power with the HT consumer is done with concerned SE(O&M) or CE of the region. The function of the accounting units headed by Accounts officer RAO/Sr. Accounts officer is to bill the HT consumer based on the meter reading furnished by SE (O&M) and thereafter to collect the remittances from the customer. As per prevalent rules and practices in CSEB, Sr. Accounts officer/Regional Accounts officer are not supposed to interact directly with consumers on the issues dealt by senior offices. It is further stated that while raising the supplementary bill as advised by office of the CE(BR), Bilaspur, Sr. Accounts officer Bilaspur presumed that an opportunity would have been given by their office to the consumer to clarify their position before instructing office of Sr. Accounts officer, Bilaspur to raise the supplementary bill. It is further pleaded that the petitioner's contention that a show cause notice is required before lodging a supplementary bill as a necessary condition is denied. It is further stated that para 11.3 of Supply Code defines the unauthorized use of electricity under section 126 of the Electricity Act, where use of electricity for the purpose other than for which usage of electricity is authorized has been defined as unauthorized use (para 11.3(iv)). The provision under para 11.6 of Supply Code delve on the procedure to be followed by the licensee once it comes to a conclusion that the consumer is indulging in unauthorized use of electricity. Nowhere, in the above provision the requirement of show cause notice as contended by the petitioner has been

mandated. The supplementary bill lodged by them is therefore a valid claim within the framework of existing rules.

4. The respondent No. 2 in their reply submitted that the petitioner's statement that they have mentioned in para 5 of the application for start-up power as based on calculation of auxiliary power requirement is incorrect because the petitioner has not at all mentioned that the power will be used for trial/streamlining of auxiliary equipments. It is further stated that the petitioner availed only 980 KVA construction power which is not matching with the actual requirement as per the quantum of the construction power availed by some other similar power plants. It is further stated that every start-up power consumer draw power for running the auxiliary under breakdown only but not for regular use of construction work. It is further stated that the petitioner availed this power (start-up) by misleading the authority of CSPDCL with bad intention for construction purpose in place of start-up power. It is further pleaded that the petitioner has in fact utilized start-up power by changing its purpose from start-up power to construction purpose by misleading CSPDCL authority. Such act of petitioner would have attracted the provision of section 135 of the Electricity Act, 2003. Otherwise also if the change of purpose is undertaken unknowingly it comes under section 126. It is further stated that as per status report submitted by the petitioner, the boiler was to be lighted up in May 08 and commercial date of operation was targetted to be September 2008. It was moral duty of the petitioner not to avail power for start-up power for streamlining of their auxiliaries, while the entire activities were going delayed. It is further pointed out by respondent No. 2 that from para 8 of our order dated 06.02.06 in petition No. 17 of 2005(M) issued before making provision for start-up power it emerges that the start-up power should be utilized during emergency, maintenance, breakdown and unscheduled outage to start-up the generator. This start-up power is to be used for limited hours i.e. occasional use in a month. In view of this 50% concession was ordered in demand charge per KVA. On the contrary, petitioner availed power round-the-clock during entire period as can be seen from MRI print of December 2008. It is further pleaded that the petitioner's contention of this case as dispute between a generating company and a licensee is totally wrong. In fact, it is the case between a HT consumer and licensee as such the case does not stand under section 86(1)(a) and (f) of the Electricity Act, 2003 and therefore, the petition is liable to be rejected. It is also pleaded that the case pertains to section 135/126 of the EA, 2003, chapter 4(iv) as per law in force for which show cause /notice is not statutory binding.

5. The petitioner on the allegations of respondent No.2 has summarized in their rejoinder as follows:

(a) On the quantum of start-up power based on auxiliary power requirement it has been mentioned that in column 8 of the Standard Application Form, it is clearly mentioned that the power is required under HV-8 category. Further, in the column 7 of purpose of installation it is mentioned for generation of electrical energy in coal based thermal power plant and in column 5 related to basis of projection of contracted demand it is clearly stated as on the basis of the auxiliary power requirement. From the details given in the application form, it is quite evident that the petitioner's power plant is yet to be commissioned. Hence the allegation is contrary to record.

(b) After submission of the application, the officers of the respondent No. 2 made a site visit and then sanctioned start-up power. Had they expressed any objection, the same should have been communicated to the petitioner before granting supply and approving tariff category. It is further stated that the comparison with other units is not relevant under the facts and circumstances of the case. It is further stated that for the purpose of construction activities they availed 980 KVA construction power from the respondents and they have DG sets also at construction site. On the point of respondent No. 2 that the start-up power is for the purpose of running the auxiliaries under breakdown only and not for regular use for construction works, the petitioner submitted that there is no distinction relating to use of start-up power for generator under commissioning and for those which have operations. It is said that it is not correct to state that start-up power is meant for running auxiliaries under breakdown only. In fact, the start-up power availed by the petitioner have been used for running auxiliaries only and there is no misuse of power as alleged. The petitioner has not utilized start-up power for construction purposes or construction power for start-up activities and this fact is established from the records of respondent No.2, particularly, the inspection report dated 18.03.09. The start-up power was released by the respondent No. 2 after inspection of plant and premises and after satisfying themselves.

(c) On the contention of the respondent No. 2 that the petitioner availed start-up power by misleading the authority of CSPDCL with bad intention for construction purposes, the petitioner submitted that the allegation is unsubstantiated and is contrary to record. As such, the petitioner furnished all the details required in the Standard Application Form on 11.04.08. Thereafter, the site inspection was carried out by the officers of the respondents. The status reports were submitted to CSEB by the petitioner every month showed the progress of construction work of the plant. The joint inspection report dated 18.03.09 does not reveal any illegal or malafide conduct of the petitioner. Thus, there was no bad intention of the petitioner as is alleged. Even assuming that the petitioner was engaged in wrongful use of electricity the respondents had an obligation to issue a show cause. The fact that such show cause was never issued which only confirms that the respondents are now justifying their actions which were illegal and without authority.

(d) On the point of availing round-the-clock power for entire period during the month of December 2008, it has been submitted by the petitioner that under the tariff order start-up power drawal is restricted to be within 10% load factor every month. In case, the load factor in a month is recorded beyond 10% the demand charges shall be charged at double the normal rate. Hence, the tariff order itself recognizes that the start-up power may be used beyond the prescribed limit. In the present case, the petitioner has drawn start-up power beyond 10% load factor limit in the month of November and December 2008 and January and April. 2009 for which it has paid penal demand charges. The reason for the same is that the plant was to synchronize in the month of January, 2009 and several start-up activities were underway in the months immediately preceding the original synchronization date. However, due to technical reasons, the synchronization of the plant could not take place in January 2009 and the plant was finally synchronized on 01.05.2009.

The petitioner in their rejoinder has concluded that in view of the aforesaid points the allegations are wholly misconstrued and without merits.

(6) The respondent No.1 and respondent No.2, both have pleaded that there is no need of issuing of any show cause notice to the petitioner before issuance of the supplementary bill. The petitioner has used the electricity for the purpose of construction work i.e. for the purpose other than for which the connection was availed (for start-up power) and thus the provision under section 135 would have attracted otherwise also section 126 of the Act, if undertaken unknowingly, and there is no provision of issue of any show cause notice in such cases. We have observed that the clause 9.12 of the Chhattisgarh State Electricity Supply Code, 2005 (Supply Code, for short) read as follows; **“separate bills shall be issued for audit recovery and other recoveries except demand for additional security deposit. Such bills should be accompanied by the written details of basis of billing, period of billing etc.”** As per this provision any additional/supplementary bill other than the regular monthly bill shall be sent to the consumer with an explanatory note indicating the grounds/reasons of raising such supplementary demand and the period of billing so that the consumer may be made aware about the basis of raising of such demand. Here, CSPHCL has issued the bill but has not endorsed the details of the supplementary bill amounting Rs.9,63,33,756/- except mentioning the change of the tariff category from HV-8 to HV-6 temporary and the period of supplementary bill. The reason and grounds on which the tariff category of consumer is changed is not informed. This clearly indicates that the provision in clause 9.12 of the Supply Code has been ignored. We, therefore, direct CSPHCL to issue instructions to their bill issuing authorities that a clear explanatory note indicating the reasons, basis, methodology and period of the billing should accompany the supplementary bill which is in line with provision of clause 9.12 of the Supply Code. As such, the concerned officers have conveniently ignored this provision repeatedly. They may obtain such details or the draft letter from the authority approving the raising of such supplementary demand. The Electricity Act, 2003, clearly specifies the procedure of dealing the cases related to section 135 (theft of energy) and section 126 (unauthorized use of electricity). As per provision in section 135 of the Act, the supply should be disconnected, FIR should be lodged. As per provision in clause 127 of the Act, which deals with the procedure for billing in respect of the cases related to section 126 of the Act, the provisional billing should be done giving an opportunity to the consumer to file objection if any and after giving reasonable opportunity of hearing to the consumer the final order needs to be passed by the authority concerned. This procedure has not been followed by the respondent. The representatives of respondent could not reply the reason of not following such procedure if in their opinion the case pertains to section 135 / 126 of the Act.

7. The respondent No.2 in their reply has alleged that the petitioner has utilized the start-up power by changing its purpose from start-up to the construction purpose. However, the respondent No.2 could not substantiate its allegation by any documentary evidence. On contrary in the inspection report dated 18.03.09 prepared by the respondent No.2, it is stated that from 400 KV start-up power in the premises the petitioner have been found using instruments such as air compressor, DM plant, Boiler preservator, CW pump motor, CCCW machine, air conditioner system and other mill motors. It is also mentioned therein that there is one more 980KVA connection at 33KV supply being utilized for the construction purposes such as welding, grinder, lighting, crane operation

etc. In the said inspection report it is nowhere mentioned that the connection for start-up power was found being utilized for the construction purposes and therefore we are of the view that the allegation of the respondent No.2 about utilizing the start-up power for the purpose of construction power is not proved. It is also pleaded by the respondent No. 2 that the start-up power connection shall be used only during emergency, maintenance, breakdown and unscheduled outage to start the generator and not for starting of the generator for the first time i.e. at the time of commissioning. The petitioner in support of its contention has given reference of para 8 of our order dated 06.02.06 in petition No. 17 of 2005(M). Our order dated 06.02.06 of petition No. 17 of 2005(M) relates to the petition filed by the President, Urla Industries Association, Raipur on behalf of members who have captive power plants for orders of the Commission on purchase of power by the licensees from CPPs and other matter mostly relating to the tariff. While the petition was under consideration some of the issues raised in the petition were also raised in separate petition filed by M/s Jayaswal Neco Ltd. (petition N. 29 of 05), M/s Bajrang Power and Ispat Ltd. (petition No. 11 of 05) and M/s Balco (petition No. 16 of 05) which were subsequently impleaded as interveners. From above, it is apparent that the order passed by this Commission on dated 06.02.06 pertains to the captive power plants which were already running and therefore, the para 8.1 of the said order mentioned that **"according to the petitioners the start-up power is availed only in emergencies to start the generator which may be required during maintenance, breakdown and unscheduled outage etc."** Thus, no any specific mention for use of start-up of the power at the time of initial commissioning of the generator was made. It is also mentioned in the last sentence of the para 8.4 of the said order that if in future the Commission introduces a separate tariff for start-up power in its tariff order, this will automatically withdrawn from the date when tariff order is made effective. The start-up power tariff was subsequently introduced by the Commission and there no such condition is mentioned that the start-up power can be used only for the purpose of start-up of the generator after the breakdown and unscheduled outages etc. of generator, and it cannot be used at the time of initial start-up/commissioning of the generator. Basically, the start-up power is to be used for running of the auxiliary equipments of the generator for the purpose of its starting, it is immaterial whether it shall be initial starting or starting after breakdown/overhauling/plant maintenance etc.

8. We have gone through the petition and its enclosure in details and observed that the petitioner have submitted the required information in the prescribed format for availing the supply for start-up power. In para 5 they have also specified that the projection of contract demand is based on calculation of the auxiliary power required. The premises was inspected by the officers of the respondent No.2 before sanction and before releasing the connection. This indicates that the officers of the respondent No.2 were aware of the purpose of requisitioned start-up power as to run the auxiliary load for the generating plant under erection and subsequently after commissioning of generator. There was no objection from the officers of respondent No. 2 before release of the connection. The allegation of the respondent No.2 that the start-up power connection was being utilized for construction purposes is found contrary to the contents of inspection report submitted by themselves on dated 18.03.09. If a case of misuse of power i.e. use of start-up power for the construction purposes was detected the respondent No.2 would have taken action against the

petitioner under section 126 and process the case accordingly which has not been done and now pleading by the respondent No.2 that this has been a case of section 135/126 has no substance. If in the opinion of the respondent No.2 the start-up power cannot be used at the time of initial commissioning of the generator then they should have brought this fact to the knowledge of the applicant before sanction and even releasing the connection. On the point of respondent No.2 raised subsequently that this case actually pertains to dispute between a HT consumer and distribution company, the petitioner pleaded that the issue is about the use of connection for start-up power for initial starting of generator. We agreed with the view of petitioner and decided to proceed with the case under section 86(1)(a) and (f) as such it relates with clarification on tariff decided by the Commission.

9. We have also observed that initially the respondent No.2 alleged the petitioner about misuse of start-up power for construction purpose, but could not submit any proof for it even the inspection report dated 18.03.09 submitted by them does not say so. It is also pleaded that such act of petitioner attract provision of section 135/126 of the Act. On enquiry as to why then action under these sections were not taken against petitioner?, they had no answer. Subsequently, they came up with contention that start-up power cannot be used by the generator in pre-commissioning period. On query that then why start-up power connection was released to petitioner before Commissioning of generator?, they had no answer. While going through the entire case we have come into conclusion that the matter has not been studied/examined properly by respondent before raising of demand of Rs.9,63,33,756/-, and also without giving any opportunity to the petitioner to explain on it. Had the case been studied properly to raise the demand based on the factual positions and documents available, such dispute/litigation would not have arisen? The CSPDCL may make a system/procedure for proper scrutiny/study of the case before raising such supplementary demand and approval of competent authority based on financial involvement.

10. In view of the facts mentioned above, we have come into conclusion that (i) there was no misuse of power from start-up power for the purpose of construction, and (ii) the start-up power can also be utilized for initial starting of the generator. Thus, the additional demand of Rs.9,63,33,756/- raised by the respondent on the petitioner has no basis and needs to be quashed off. We order accordingly.

Sd/-  
Member

Sd/-  
Chairman