



Chhattisgarh State Electricity Regulatory Commission

Civil Lines, G.E. Road, Raipur - 492 001 (C.G.)

Ph.0771-4048788, Fax: 4073553

Website : www.cserc.gov.in, E-mail : cserc.sec.cg@nic.in

Petition No.32 of 2007(M)

In the matter of a shareholder company being classified as captive consumer of the power plant being set up by the petitioner company

UltraTech Cement Limited Petitioner
Hirmi Cement Works, Hirmi, Raipur.

V/s

Chhattisgarh State Electricity Board Respondent
Raipur

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

ORDER

(Passed on 21/2/2008)

This is a petition filed by M/s Ultratech Cement Ltd ., Raipur (UTCL, hereinafter) seeking classification of M/s Grasim Industries Ltd (GIL, hereinafter) as a 'captive consumer' of the power plant being set up by UTCL, in terms of the provisions of sections 2(8) and 9 of the Electricity Act, 2003 ('the Act' hereinafter) read with rule 3 of the Electricity Rules ('Rules' hereinafter), UTCL claims to be a subsidiary of GIL which directly holds 47% of the share capital of UTCL. Both the companies have cement plants in Raipur district in Chhattisgarh and are presently meeting their power requirement from Chhattisgarh State Electricity Board (CSEB or the Board, for short). UTCL is installing a 2x25 MW captive thermal power plant (CPP). After meeting its power requirement in the cement plant, UTCL would like to supply 3 to 4 MW of surplus power through a dedicated 33 KV transmission line to GIL. UTCL and GIL together will consume 100% of the power of the CPP being set up. On the basis of the pattern of the shareholding of the company setting up the CPP as also the captive consumption, UTCL has prayed that its power plant be declared a CPP in relation to GIL also under the provisions of section 2(8) and section 9 of the Act and rule 3 of the Rules. It is also prayed that GIL be declared a 'captive user' receiving power through a dedicated transmission line. There was a third prayer to allow UTCL to wheel power to GIL through CSEB's grid till the dedicated transmission line has become operational, which was subsequently withdrawn being a matter relating to open access not within the jurisdiction of this Commission.

2. CSEB, the respondent in this case, has not contested the position given in the petition in its reply of 5.2.1008. However, the Board has raised two issues: First, it has been contended that section 9 does not confer any jurisdiction on the Commission regarding adjudication and declaration of a captive status of a consumer/generator. The

plea is that the Commission lacks jurisdiction in deciding this matter. The second contention is regarding prayer for open access till the dedicated transmission line of UTCL is operational. This issue, as has been stated above, has not been pressed by the petitioner. The only issues for consideration, therefore, are (i) whether the Commission has jurisdiction to decide the issue regarding a generator or a consumer being captive within the meaning of section 9 of the Act; and (ii) whether GIL can be treated as a captive consumer within the scope of section 2(8) and section 9 of the Act and the provisions of rule 3 of the Rules, of the UTCL's power plant and the latter a CPP in relation to GIL.

3. As to the first issue about jurisdiction of the Commission, we have in a number of earlier cases declared, on the basis of petitions filed before us, generating plants as CPPs. In two of these cases namely, Shri Bajrang Power & Ispat Ltd., versus CSEB (petition No. 25 of 2005), and M/s Vandana Global Ltd versus CSEB (petition No. 10 of 2005), the orders of this Commission have been upheld by the Hon'ble Appellate Tribunal for Electricity (ATE) in appeal Nos. 32 of 2007 and 164 & 165 of 2006 and revision petition Nos. 1 & 2 of 2007, decided together on 6.5.2007 (2007 ELR of APTEL 1631). We have in another case namely, M/s. UltraTech Cement Company, Raipur versus CSEB (petition No. 37 of 2006) specifically dealt with this issue at length. The Commission's orders in that case have not been challenged. Para 4 of this order is relevant and is quoted below:

"The Act thus makes special provision regarding the captive generating plant and such a plant has been provided the benefit of the right to open access for the purpose 'of carrying electricity from his captive generating plant to the destination of his use'. Rule 3 as above lays down the criteria by which to judge a captive generating plant and the captive user(s). The National Electricity Policy in paragraph 5.5.24 to 5.2.26 makes special provisions for such power plants. Special provision has been made in the Act and the two national policies to promote captive generating plants as decentralized generation and as a source of supply of power to the grid. The State Government policy offers incentive to such plants by way of exemption from electricity duty for a specific period. Unless a power plant is declared upfront a captive generating plant, on the basis of the criteria laid down in the rule 3 of the Rules, it will not be able to avail the incentives offered by the State Government. More importantly, it will not be able to avail open access as a matter of right which the Act provides. Secondly, unless the captive users are identified right at the beginning, on the basis of qualification laid down in rule 3, an annualized assessment of total consumption by captive users to determine whether the plant is a captive generating plant would not be possible. This cannot be done by the state transmission utility or a distribution licensee; nor is there any provision in the Act enabling the State Government to do so. Since permission for open access under section 39, 40 and 42(2) of the Act is given by the Commission, we feel that the State Commission would have to take on the responsibility of declaring a generating plant as a captive one and monitoring on an annual basis if it satisfies the criteria laid down in Rule 3."

In view of our order above we do not wish to go into this issue again.

4. As to the main issue of GIL being a 'captive consumer' of UTCL's power plant and the latter being a CPP in relation to GIL, the provisions of law as contained in section 2(8) and section 9 of the Act are quite clear. Rule 3 lays down the requirements of a captive generating plant. As per the provisions of this rule, the twin criteria to be applied to determine whether a power plant is captive, are the following:

- (i) the captive user(s) should hold not less than 26% of the ownership of the power plant; and
- (ii) not less than 51% of the aggregate electricity generated in such plant, determined on an annual basis, should be consumed for the captive use [Rule 3(1)(a) of the Rules].

As per the explanation to this rule "ownership" in relation to a generating station or power plant set up by a company shall mean the equity share capital with voting rights. That the shareholder of a company is entitled to use the power of CPP established by the company, as a captive user, if the above two criteria are met, has been settled by APTEL in their judgement aforementioned in the case of Malwa Industries Ltd Versus Punjab State Electricity Regulatory Commission and others (2007 ELR of APTEL 1631). In the present case GIL holds 47% of the share capital of UTCL and therefore it satisfies the first criterion of being a CPP within the meaning of section 2(8) of the Act. Admittedly, however, GIL would be consuming only a small portion of the power generated by UTCL's CPP. Therefore, the only issue which needs to be addressed here is whether the generating plant satisfies the second issue of consumption to the extent of 51% of the power generated. The rule requires that for a generating plant to be classified as a captive generating plant not less than 51% of electricity generated should be consumed for 'captive use'. We are of the view that the captive use cannot be limited only to the second user. UTCL is also a captive user and will be using bulk of the power generated. The consumption by the cement plants of UTCL and GIL will constitute 100% of the power generated by the CPP. Thus the entire power generated by the plant shall be put to captive use. We have held in another case, of Shri Bajrang Power and Ispat Ltd., in our order of 14.10.2005 (Petition No. 25 of 2005), that the shareholding criterion being satisfied, the consumption of all captive consumers have to be treated as captive use. As per the explanation to rule 3, "a captive user 'shall mean end user of the electricity generated in a captive generating plant' and the term 'captive use' shall be construed accordingly". Going by the above definition GIL qualifies to be a captive user.

5. In view of the above we hold that GIL is a captive user of the power plant being set up by UTCL and is entitled to use the power produced by the CPP through the dedicated 33KV transmission line being set up by UTCL for carrying electricity for captive use in the manner as envisaged under section 9 of the Act.

Sd/-
Member

Sd/-
Chairman

True Copy

(N.K.Rupwani)
Secretary