



Chhattisgarh State Electricity Regulatory Commission

Civil Lines, G.E. Road, Raipur – 492001

Tel: 0771-5073555, Fax-5073553

Petition No. 10/2006 (M)

Chhattisgarh State Electricity Board

....

Petitioner

V/s

Shri Bajrang Power & Ispat Ltd.

....

Respondent

ORDER

(Passed on 28.04.2006)

The Chhattisgarh State Electricity Board (CSEB or the Board, for short) has submitted two similar petitions, under Clause 43 of the CSERC (Conduct of Business) Regulations, 2005 for review of the orders passed in petition No. 10 of 2005 and petition No.25 of 2005 in which the Commission has declared certain companies, holding shares in M/s Vandana Global Limited (petition No. 10 of 2005) and M/s Bajrang Power & Ispat Limited (petition No. 25 of 2005), which have set up captive power plants, as ‘captive consumers’ within the meaning of Rule 3 of the Electricity Rules, 2005 (the Rules, for short). The only issue on which the review petition has been submitted is that the Commission has failed to direct that the captive users should use electricity generated by the captive power plant (CPP) only in proportion to their shareholding in the companies holding the CPPs. The Board’s conclusion that the Commission erred as above is based on a letter they have received from Ministry of Power, Government of India (letter No.23/23/2005 dated 22.12.2005) which clarifies that the share of such captive consumer has to be in proportion to their equity in the company.

2. We have heard the learned counsel for the petitioner at length. His main argument is regarding the meaning and classification of captive generating plant. His argument is that a careful reading of the definition of captive generating plant, as given in Sec. 2(8) of the Act, would clearly indicate that such a plant set up by a company generates electricity primarily for the company’s own use. This use is not extendable to the shareholders of the company, unless the generating station has been set up by shareholders through a special purpose

vehicle. He has sought to draw a distinction between a captive generating plant set up by a company and set up by a cooperative society or association of persons. His argument is that when a company owns a CPP its shareholders can have no claim to captive consumption unlike the members of a cooperative society or an association of persons. On the issue of use of electricity generated by such a plant in proportion to their shareholding, on the other hand, his argument is that a company in a sense is also an association of persons and hence what is valid for an association of persons, holding a CPP, under Rule 3, should be valid for the shareholders of a company also. These two positions are prima facie contradictory. However, we will deal with both.

3. With regard to the first point made by the learned counsel, it is quite clear from the review petition that the petitioner does not question the status of the shareholders as captive consumers in the CPP. The plea for review is based on the perceived failure of the Commission to declare that those captive consumers are entitled to share in the electricity generated by the CPP in proportion to their shareholding only, and not that they should not have been classified as captive consumers. We would, therefore, not like to go into the matter regarding what is a CPP and whether the consumers declared by the Commission in the impugned orders as captive consumers was right, important though this issue may be. In any case, this issue has been considered by this Commission in detail, in the order dated 5.4.2006 passed in petition No.36 of 2005(M), M/s Hira Ferro Alloys Limited Vs. CSEB. There is no ground for review of the position already taken by the Commission in this regard on the basis of the provisions of the law and the rules.
4. As to the issue of consumption only of proportionate share, the merit of this has also been examined in the order dated 5.4.2006 aforementioned and we do not propose to go into the issue again. We have clearly held that in case of a company holding a total of 26% of the shares gives the users the status of being captive users and consumption in proportion to shareholding is not envisaged in Rule 3 in so far as a company is concerned. We would, however, like to briefly deal with the legal validity of the so-called clarification issued by the Ministry of Power, which forms the basis of this review petition. This letter of 22nd December, 2005 has apparently been issued in reply to CSEB's letter of 25.8.2005 seeking clarification on requirement of captive generating plants. The legal validity of this

clarification is questionable. In the matter of interpretation of the provisions of the Act, or of the Rules, a letter addressed to the Board has no legal validity. The Central Government has been vested with the power to make rules under section 176 of the Act. Although the rule-making power extends to 'any other matter which is required to be, or may be prescribed', the matter at issue does not fall in this category. The Central Government also has power to issue orders under Sec. 183 of the Act to remove difficulties which may arise in giving effect to the provisions of the Act. However, this power has been limited to a period of two years from the date of commencement of the Act. This period is already over. There is no other provision in the Act under which the Central Government may issue letters to clarify the position in respect of any provision of the Act or the Rules. The Commission, in any case, has also gone into and examined the clarification issued in this letter, in its order dated 5.4.2006 [passed in petition No. 36 of 2005(M)] aforementioned. This letter can not form the basis for review of orders passed by the Commission long before it was issued.

6. In view of the above, we hold that there is no prima- facie ground for admission of petitions for review of the two impugned orders of the Commission. The review applications are therefore rejected at the stage of admission only.
7. This order shall be common to both petition No.10 of 2006 and 4 of 2006.
8. The order may be communicated to the CSEB and the case filed

Sd/-
Member

Sd/-
Chairman

True Copy

(N.K.Rupawni)
Secretary