

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**APPEAL No.157 OF 2009**

**Dated: 17 February, 2012**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member,**

**In the Matter Of**

GRIDCO Limited (Formerly known as  
Grid Corporation of Orissa Ltd.)  
Bhubaneswar, Orissa-751 022

Appellant(s)

Versus

1. M/S. Central Electricity Supply Utility of Orissa  
(CESU),  
Bhubaneswar,  
Orissa-751 001
2. Orissa Electricity Regulatory Commission (OERC)  
Bidyut Niyamak Bhawan, Unit-VIII,  
Bhubaneswar-751 012  
Orissa

Respondent(s)

Counsel for the Appellant : Mr. Raj Kumar Mehta  
Mr. Antaryami Upadhyay  
Ms. Marie Riba  
Mr. Lakhi Singh  
Mr. S Zakhir Singh

Ms. Sangita Pradhan  
Mr. Athouba Khaidem

Counsel for the Respondents : Mr. Vishal Gupta for R-1  
Mr. Sahil Narang for R-1  
Mr. Rajat Jariwal for R-1  
Mr. Avinash Menon for R-1

Mr. Rutwik Panda for R-2  
Mr. Siddharth for R-2

## **JUDGEMENT**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

1. GRIDCO Limited is the Appellant herein.
2. M/s. Central Electricity Supply Utility (CESU), the 1<sup>st</sup> Respondent, filed a Petition before the State Commission praying for a direction to GRIDCO to withdraw the Bill for the year end adjustments of Rs.12.80 Crore towards the excess drawal. This petition was allowed by the State Commission in favour of the CESU thereby disallowing the claim of GRIDCO against the CESU for Rs.12.80 Crores. Aggrieved by this order, the GRIDCO Limited has filed this present Appeal.
3. The short facts are as follows:
  - (a) GRIDCO Limited, the Appellant is carrying on the function of Bulk Supply of Electricity to the four distribution Companies including CESU the First Respondent.

- (b) On 18.9.1999, the Bulk Supply Agreement was entered into between the GRIDCO and Central Electricity Supply Company of Orissa. The Bulk Supply tariff order was passed by the State Commission on 19.1.2001. As per the Bulk Supply order for the Financial Year 2000-01, CESU (R-1) is liable to pay for excess drawal over and above their approved quantum of energy.
- (c) GRIDCO served the bill for the excess drawal of 89.6 MU amounting to Rs.12.80 Crore on R-1. This was served on 13.8.2003.
- (d) After a long lapse of time i.e. after 5 years, the CESU (R-1, filed a Petition on 3.6.2008 before the State Commission questioning the said bill and praying for a direction to GRIDCO to withdraw the said bill for the year end adjustment of Rs.12.80 Crores towards the excess drawal.
- (e) Since the Petitioner filed the Petition after a long delay, the State Commission sought for the explanation for the said delay. Accordingly, the CESU (R-1) filed the explanation for the delay on 4.11.2008.

- (f) After hearing the parties, the State Commission passed the impugned order dated 1.7.2009 allowing the Petition filed by CESU after condoning the delay.
- (g) Aggrieved by this order, the GRIDCO Limited has filed this Appeal challenging the order dated 1.7.2009 on the sole ground that the State Commission has condoned a long lapse of delay of 5 years in filing the Petition by R-1 even though the said delay has not been duly explained.
4. According to the Appellant, there is no proper explanation whatsoever given by the CESU (R-1) for the unduly long delay of 5 years in filing the Petition and as such the impugned order granting the relief sought for by the CESU (R-1) after condoning the unexplained delay of 5 years is liable to be set-aside.
5. The Respondent on the other hand in defending the order impugned submitted that the settlement talks over the dispute with reference to the said bill between both the parties went on from 2003 to 2008 and the attempts between both the parties to amicably settle the issue failed on 15.3.2008 and therefore, the CESU (R-1) filed this Petition on 3.6.2008 and the State Commission after having satisfied with the explanation with details furnished before the State Commission, had condoned

the delay and granted the relief to the CESU (R-1) and therefore, this Appeal is liable to be dismissed.

6. The question which may be framed for consideration is this:

**“Whether the State Commission was justified in entertaining the Petition filed by CESU (R-1) questioning the bill after a lapse of almost 5 years and in granting the relief sought for after condoning the said delay which was not properly explained ? ”.**

7. On this question, elaborate arguments were advanced by both the parties. Various authorities also have been cited by both the parties.
8. At the outset, it shall be stated that the Appellant has not challenged the impugned order order of the State Commission on the merits of the claim. The challenge in the Appeal has been made is only to the order condoning the long delay on the ground that the State Commission ought not to have condoned the delay of 5 years without proper explanation. Hence, we need not go into the merits of the claim particularly when the State Commission passed the similar orders granting similar relief to the other similarly situated distribution companies considering the merits of the said claim. As such, we are only concerned with the sufficiency of the cause shown by the Respondent to the State Commission to condone the delay. In this case, the State Commission condoned the delay on the

basis of the particulars furnished by CESU. Those particulars explaining the delay was placed before the Commission are as follows:

- (a) That GRIDCO has raised the demand of above mentioned amount against CESU for the FY 2000-01 on 13.8.2003 which was not accepted by CESU and the same was communicated to the GRIDCO on 16.5.2005.
- (b) GRIDCO informed the four DISCOMs including CESU for reconciliation of back to back loan as per direction of the Commission and also requested to depute concerned officials for finalization of reconciliation work which would be signed by both the parties for necessary submission before the Commission. The reconciliation work was going on in between GRIDCO and CESU officers, pursuant to the communication dated 16.5.2005. Several meetings were held without any fruitful result.
- (c) On 28.9.2005, the General Manager (F)-cum-Company Secretary of CESU in his communication to the Sr. General Manager (F), CF, GRIDCO furnished the information under different heads including power purchase liability upto 31.03.2005.

Therein CESU has denied its liability towards the claim of GRIDCO i.e. demand of Rs.12,80,14,659/- towards year end adjustment for FY 2000-01.

- (d) That, on 02.11.2005, GRIDCO on its own prepared a reconciliation statement with the signature of its representative and sent to the CESU for signature. CESU did not accept it and on 16.3.2006 sent a revised statement to GRIDCO.
- (e) On 30.5.2007, the Sr. G.M. (PP), GRIDCO requested the CEO, CESU to accept the reconciliation statement upto 2004-05 and to depute officers for reconciliation of BST dues for FY 2005-06 and FY 2006-07. Again on 06.07.2007, Director (Finance), GRIDCO informed the CEO, CESU about reconciliation of outstanding dues and signing of joint reconciliation statement.
- (f) On 02.08.2007, CESU sent a signed statement of back-to back loan and BST on the basis of previous reconciliation dated 31.03.2005. GRIDCO did not accept it.
- (g) On the request of GRIDCO dated 11.4.2008, a detailed discussion was made with regard to year-end adjustment bill of DISTCOs with the CESU and

the minutes were drawn in which CESU objected to the year-end adjustment raised by GRIDCO for FY 2000-01.

9. On the basis of the above explanations giving the events of meetings and discussions, it was contended by the CESU (R-1) that during the entire period, both the parties were in discussion to settle the dispute but ultimately the talks of settlements failed on 15.3.2008 and only thereupon, the CESU (R-1) having no other alternative filed a Petition on 3.6.2008 before the State Commission questioning the bill dated 13.8.2003.
10. In the light of the above fact situation, we are called upon to consider the question whether the delay of 5 years is satisfactorily explained.
11. Admittedly, when the CESU (R-1) did not accept the liability to pay the amount in the bill dated 13.8.2003, the Appellant immediately sent the communication to that effect to the Appellant. Then the Appellant through its communication dated 16.5.2005, informed the 04 Distribution Companies including the 1<sup>st</sup> Respondent who questioned this demand bill for reconciliation of back to back loan and requested these Companies to depute their officials for reconciliation work which

would be signed by both the parties for necessary submission before the State Commission.

12. Pursuant to this request, several meetings were held on different dates between the representative of Appellant and CESU (R-1) but those meetings were not fruitful. On 28.9.2005, the CESU through its Company Secretary had sent a letter to the Appellant on the subject of "Furnishing of information relating to calculation of interests on GRIDCO Loan' referring to the reconciliation of BST payments.
13. It is also evident from the letters subsequently sent, that on 2.11.2005, the Appellant prepared a reconciliation statement and sent the same with signatures of the Appellant to the R-1 for signatures on the said reconciliation. To the said communication, a reply was sent by the CESU (R-1). Then on 30.1.2006, the Appellant informed the CESU to depute its authorized officer to sign the reconciliation statement. To this, a reply was sent on 16.3.2006 submitting the revised conciliation statement to the Appellant. The Appellant sent a communication on 30.5.2007 requesting the R-1 to accept the reconciliation statement upto 2004-05 and to depute the officer of R-1 for reconciliation for the Financial year 2005-06 and 2006-07. The Appellant sent another letter dated 6.7.2007 to the R-1 acknowledging the fact that the officials of the First Respondent had in a meeting reconciled the BSP bills and loan

dues as on 31.3.2005. The said reconciliation statement was signed later in the year 2008. Further on the Appellant's request, a detailed discussion was held with regard to payability by the distribution Companies including the R-1 to the Appellant and the minutes were drawn and the same was communicated to the R-1 on 11.4.2008.

14. The above details would show that the reconciliation talks were going on between the Appellant and the First Respondent with regard to BST and other outstanding dues for the long time.
15. It is also clear from the correspondence referred to above that the reconciliation process was going on till 2008 and the term BST or BSP wherever used refers and includes the term 'year end adjustments'.
16. There is one more aspect to be noticed in this context. The Petition in the case No.21/2008 had been filed by R-1 before the Commission on 3.6.2008. During the pendency of the Petition, again reconciliation statement with reference to the dues as on 31.3.2005 was prepared and signed by both the representatives of the Appellant and the R-1 and the same was filed before the State Commission on 28.6.2008.
17. In that statement, it has been specifically stated that the year end adjustment of Rs.12.80 Crores for the Financial Year

2000-01 which has been included in the outstanding BST would be subject to final decision of the State Commission in case No.21 of 2008 filed by the CESU (R-1). This again will prove that the amount of Rs.12.80 Crores for the Financial year 2000-01 termed as year end adjustment was under conciliation between the Appellant and the Respondent not only till the Petition was filed by the CESU in 2008 but also thereafter.

18. According to the Appellant, the State Commission grossly erred in condoning the delay of about 5 years without giving any valid reason especially when the Hon'ble Supreme Court has held that a "person who is not vigilant and is sleeping over his rights cannot subsequently seek relief on the ground that the same relief should be granted to him as granted to persons similarly situated. The Learned Counsel for the Appellant cited the following decisions in this regard:

- (a) *M/s. Rup Diamonds and Others Vs Union of India and Others (1989) 2 Supreme Court Cases 356*
- (b) *Jagdish Lal and Others Vs State of Haryana and Others (1997) 6 Supreme Court Cases 538*
- (c) *U.P Jal Nigam and Another Vs. Jaswant Singh and Another (2006) 11 Supreme Court Cases 464*

19. Per Contra, the Learned Counsel for the Appellant has cited the judgement in N.Balakrishnan Vs. M. Krishnamurthy: (1998)

7 SCC 123 in which it is held that the **“condonation of delay is a matter of discretion of the Court”** and that **“Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory”**.

20. In the present case, it cannot be said that the 1<sup>st</sup> Respondent was sleeping over his rights all along. Therefore, in view of the above decided cases, we are of the opinion that though the delay is long, the proper explanation, which is satisfactory, has been offered by the First Respondent for the said delay in approaching the Commission and as such the CESU cannot be accused of lack of diligence.
21. Hence, we do not find any infirmity in the impugned order particularly when the merits of the claim has not been challenged in this Appeal.
22. Hence the Appeal is dismissed. No order as to costs.

**(Rakesh Nath )**  
**Technical Member**  
Dated: 17 Feb, 2012

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Reportable/Not Reportable