

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

Appeal No. 21/2009

Dated: 14th July, 2009

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

IN THE MATTER OF:

Western Electricity Supply Co. of Orissa Ltd.

Burla

Distt. Sambalpur – 768 017

Orissa

.... Appellant

Versus

Orissa Electricity Regulatory Commission

Vidyut Niyamak Bhawan

Unit-VIII, Bhubaneswar – 751 012

... Respondent 1

Orissa Power Generation Corporation Ltd.

IB Thermal Power Station

At: Belpaahar

Distt. Sambalpur – 768 217

... Respondent 2

Orissa Power Transmission Corpn. Ltd.

Janpath

Bhubaneswar – 751 022

... Respondent 3

Counsel for the Appellant(s)

: Mr. Suresh Tripathy

Mr. S.K. Mohanty

Mr. M.A. Khan

Counsel for the Respondent(s)

: Mr. R.K. Mehta

Mr. Gaurav Srivastava

Mr. Antaryami Upadhyay

Mr. Sanjay Sen

Ms. Sikha Ohri

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson:

JUDGMENT

1. Western Electricity Supply Co. of Orissa Ltd. (WESCO) is the Appellant herein. Aggrieved by the Order passed by the Orissa State Commission in the petition dated 12.12.2007 filed by M/s. Orissa Power Generation Corporation Ltd. (OPGCL) and also the Order dated 5.11.2008 passed by the State Commission dismissing its Review Petition, WESCO has filed this Appeal.

Facts

2. Claiming ownership over a 33 KV feeder line from Brajrajnagar to IBTPS, the OPGCL filed a Petition before the Orissa State Commission seeking for the suitable directions to WESCO not to extend power supply to any of its consumers etc. as the said line exclusively belonged to the OPGCL.

3. This Application was opposed by the Appellant WESCO on the ground that though the said line was constructed by the OPGCL to avail power for the construction of its generating station, the said line was transferred to the Orissa State EB and subsequently to GRIDCO and thereafter to the WESCO and as such, the said line belongs only to the Appellant and not to the OPGCL. The said petition was ultimately allowed by the State Commission holding that the said line belonged exclusively to the OPGC as per the materials produced by

the said corporation, and that the Appellant cannot claim ownership of the said line as it did not place any supporting material before the State Commission.

4. WESCO, the Appellant herein, thereupon on collection of some documents which are relevant to the issue, filed a Review Petition before the State Commission under Regulation 70 of the Orissa Electricity Regulatory Commission (Conduct of Business) Regulations 2004 seeking for the Review of the main order on the strength of these documents. This Review Petition was entertained and notice was ordered to the Respondent OPGCL. The said Petition was opposed by the OPGCL mainly on the ground that the Petitioner in the Review Petition has not satisfied the requirements of the provisions relating to the Review and therefore, the documents produced belatedly before the State Commission in the Review cannot be considered.

5. Accepting the said objections, the State Commission dismissed the Review Petition by its order dated 5.11.2008 mainly on the ground that the review is not maintainable and as such, the documents produced before the Commission cannot be considered. Hence, this Appeal as against both the orders dated 22.12.2007 and 5.11.08 by the Appellant.

6. According to the Learned Counsel for the Appellant, the State Commission ought to have considered the documents produced before the Commission and decide the question as to the ownership

of the said KV line in the light of those documents and the State Commission simply dismissed the Review refusing to consider those documents by accepting the objections raised by the Counsel for the Respondent, namely the OPGC, merely by stating that the Review is not maintainable as the Appellant/Petitioner has not satisfied the requirements for the Review. It is also contended by the Counsel for the Appellant that the documents dated 12.2.86, 27.12.86 and 3.7.86 are the relevant documents which were made obtained by the Appellant only after the disposal of the main Petition and when those documents which are relevant to decide the issue were brought to the notice of the State Commission in the Review, the Commission ought to have considered them and decided the issue on the basis of those documents and failure to do the same has resulted in a serious miscarriage of justice. On the strength of these submissions, the learned counsel for the Appellant requests for the remand of the matter to the State Commission for consideration of those documents.

7. The Counsel for the Respondent, on the other hand, would submit in his reply in justification of the impugned Orders passed by the State Commission on 22.12.07 and 5.11.08 respectively.

8. We have heard the submissions of the learned counsel for the parties and given our anxious consideration to the same. On a careful consideration of the submissions made by the learned Counsel for both the parties and also on going through the relevant records and both the impugned Orders, it is clear that these documents would

indicate that they are also the relevant documents for deciding the issue relating to the ownership of the 33 KV feeder line. According to the Appellant, those documents which came to light to the Appellant only now would indicate that the line has been constructed on the 'Deposit Work Basis', on payment of necessary feeds towards supervisory and inspection charges to the OSEB, the predecessor of the Appellant and the supply has been given to the OPGC as well as to the other consumers.

9. It is the specific stand taken by the learned counsel for the Appellant that these documents were not made available by the Appellant before the State Commission while dealing with the issue as they did not have the knowledge about the same. This is not seriously disputed by the learned counsel for the Respondents. The State Commission in the main Order which was passed on 22.12.07, as a matter of fact, specifically held that the WESCO, the Appellant has not been able to produce any document in proof of its ownership of the feeder line, and on the contrary the records produced by the OPGCL clearly establish that the said KV line was constructed by the OPGC. In this context, we deem it necessary to quote the findings of the State Commission in the main order dated 22.12.07:

“The Wesco could not produce any proof of ownership of the line but submitted that the aforesaid line was owned by the erstwhile OSEB From the available records specifically, the minutes drawn up between the OPGC and

the WESCO it is obvious that this 33 KV line from Ranja to ITPS is a line owned by the OPGC.”

10. The above finding would clearly indicate that the Commission relied upon the documents filed by the OPGCL only and gave a finding in their favour mainly on the ground that no documents were produced by the WESCO to establish their plea.

11. When such being the case, the Appellant WESCO who was able to collect the relevant documents and produce the same before the Commission in the Review Petition to establish its ownership of the KV line, the State Commission ought to have considered the same and given a finding as to whether those documents are indeed the relevant documents to decide the issue and whether those documents were sufficient to hold otherwise.

12. Admittedly, the State Commission by the impugned Order dated 5.11.08 simply dismissed the Petition on the ground that the Review is not maintainable. As pointed out by the Learned Counsel for the Appellant, the Commission can allow the Review Petition under Regulation 70 under Section 94 of the Act and also under Order 47 Rule 1 CPC when it is brought to the notice of some new documents being produced which are relevant for deciding the issue.

13. It is settled law that one of the grounds for the Review is the discovery of new and important material or evidence. This is not disputed by the learned counsel for the Respondent. The very fact

that the Appellant took a specific stand before the State Commission in the Review Petition that the relevant documents came to its knowledge only later would indicate that the Appellant was not able to produce those documents/materials before the State Commission despite due diligence. Therefore, the objection the Petition of the Respondent raised before the State Commission questioning maintainability of the Review Petition on the ground that the Appellant WESCO failed to establish before the State Commission that the Appellant could not produce those documents in spite of its due diligence is not sustainable.

14. In this case, admittedly, the documents which were produced before the State Commission were not considered at all, with reference to their relevancy or their sufficiency. On the other hand, the Review has been simply dismissed on the ground that the Appellant has not satisfied the Commission with any ingredient required for review of the Order. This in our view is not the correct reasoning.

15. We are of the opinion that the State Commission should have considered those documents in order to decide the issue with reference to the ownership of the KV line on the strength of those documents and this was not done. Hence, we deem it fit to remand this matter to the State Commission.

16. Accordingly, both the Orders dated 22.12.07 and 5.11.08 passed by the State Commission are set aside and the matter is

remanded. We direct the State Commission to consider the new documents produced by the Appellant WESCO and give opportunity to both the parties to find out the relevancy of the documents and decide the matter with regard to the ownership in accordance with law. It is however, made clear that we are not expressing any opinion either with reference to the said documents or with reference to the issue. The State Commission can decide the issue afresh on the basis of the materials/documents produced by both and on the basis of the submissions made by both the parties.

17. The Petition is allowed. The State Commission may pass the final order after hearing both the parties as expeditiously as possible. No costs.

(A.A.Khan)
Technical Member

(Justice M.Karpaga Vinayagam)
Chairperson

Dated: 14th July, 2009

REPORTABLE / NON-REPORTABLE