

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

Appeal No. 317 of 2013

Dated : 29th November, 2014

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

In the matter of :

**M/s. T S Alloys Limited
N-3/24, Nayapalli,
Bhubaneswar-751 012
District-Khurda, Odhisha,**

... Appellant

Versus

- 1. Odhisha Electricity Regulatory Commission
Bidyut Niyamak Bhawan,
Unit-VIII,
Bhubaneswar, Odisha-751 012**
- 2. Odisha Power Transmission Corporation Limited,
Janpath, Bhubaneswar,
District-Khurda, Odisha-751 022**
- 3. Grid Corporation of Odisha Limited,
Janpath, Bhubaneswar,
District-Khurda,
Odisha-751 022**
- 4. Central Electricity Supply Utility,
IDCO Towers, 2nd Floor, Janpath,
Bhubaneswar, Odisha-751 022.**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ashok Kr. Parija, Sr Adv
Mr. R M Patnaik
Mr. P P Mohanty
Mr. Shusan
Mr. Tarun Tarhaik

Counsel for the Respondent(s): Mr. Rutwik Panda
Ms. Anshu Malik for R-1
Mr. Raj Kumar Mehta
Mr. Elangbam
Mr. L N Mohapatra
Ms. Ishita C Dasgupta
Mr. Antaryami Upadhyay
Mr. Abhishek for R-2 & R-4

JUDGMENT

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

1. M/s. T S Alloys Limited is the Appellant herein.
2. The present Appeal has been filed by the Appellant as against the impugned order dated 1.8.2013 passed by the Odisha Electricity Regualtory Commission to the extent that the State Commission has failed to pass consequential order pursuant

to the directions given by this Tribunal in Appeal No.30 of 2012 dated 14.12.2012 and Appeal No.94 of 2011 dated 21.12.2012.

3. The short facts are as under:

- i) The Appellant is a consumer of the electricity in the area of supply of Central Electricity Supply Utility (CESU).
- ii) In the year, 2005, the State Commisison had initiated suo-moto proceedings in respect of performance of the Distribution Licensees.
- iii) On 22.7.2006, the State Commission disposed of the said proceedings.
- iv) Being aggrieved over by the aforesaid order, the Odisha Power Transmission Corporation Limited (OPTCL) filed a Review Petition before the State Commission.

v) The State Commission disposed of the said Review Petition by the Order dated 26.4.2011 giving some finding. The present Appellant being aggrieved by this order giving some finding against them filed an Appeal before this Tribunal in Appeal No.94 of 2011. Similarly, the OPTCL also had filed an Appeal In Appeal No.30 of 2012 against the said order in respect of some finding.

vi) These Appeals were taken-up separately by this Tribunal. On 21.12.2012, this Tribunal disposed of the Appeal No.94 of 2011 of the Appellant M/s. T S Alloys Limited and gave the following directions:

“21. Having perused all the records made available to us, we are of the view that the tenor of the letters from OPTCL to Appellant reflects the dominating and commanding position of the OPTCL while dealing with the consumers.

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24. *From the above discussions it is evident that the Appellant did not deposit the amount voluntarily but deposited the same 'On demand'. The question is answered accordingly.*

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35. *Thus, the 2nd respondent was not entitled to collect the Infrastructure Loan from prospective EHT consumers.*

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43. *In the present case the 2nd respondent did not make any prayer for stay of Commission's order and, therefore, the same was operative when the demand for supervision charges was made. The 2nd respondent ought to have followed the Commission's order and collected only 6% of total cost of the line as supervision charges. The 2nd Respondent has violated the Commission's order by charging 16% supervision charges.*

44. *In the light of above findings, we find it appropriate to direct the Commission to pass consequential order keeping in view the above observations within two months from date of this judgment.*

45. *The appeal is allowed. However, there is no order as to costs".*

vii) In this judgment, this Tribunal gave a direction to pass consequential orders keeping in view of the findings and observations made in the judgment within a period of two months. However, the State Commission did not pass any consequential orders within two months.

viii) Therefore, the Appellant filed an Application before the State Commission with a prayer to pass consequential orders pursuant to the directions given by this Tribunal in Appeal No.94 of 2011.

ix) Accordingly, the State Commission disposed of the said Application by the Impugned Order dated 1.8.2013. The same is as follows:

“6. After perusing all the records available and taking note of the observation of the Hon’ble Tribunal in the remand order we find that the agreement between OPTCL and M/s. Rawmet was amended on 27.07.2006. Therefore, it was executed when the Order

of the Commission dtd. 22.07.2006 was in full force. Both the Petitioner and OPTCL were fully aware of the contents of the Commission's order where the Commission had disapproved collection of money from the consumer by OPTCL. Both the parties have professionally qualified people in their Organization and also the benefit of legal advice from the Counsels in such a situation were available to them. It is difficult to hold on the basis of material available on the record that the agreement between the Petitioner and OPTCL have been signed under duress.

7. The Order of the Commission dtd. 22.07.2006 has been upheld by Hon'ble ATE. Therefore, parties are directed to implement that Order.

8. Accordingly, the instruction of the Hon'ble ATE in Appeal No. 94/2011 is disposed of."

x) This order shows that the State Commission without passing the consequential orders by violating the directions given in the judgment of this Tribunal gave a contra finding to the effect that the Agreement between the T S Alloys Limited and OPTCL have not been signed under duress. This is exactly contrary to the conclusion and findings made and arrived at by this

Tribunal. Thus, the consequential orders have not been passed by the State Commission following the directions of this Tribunal.

xi) That apart, this Tribunal in Appeal No.30 of 2012 filed by the OPTCL, made an observation while giving the judgment on 14.12.2012:

“a line between transmission system and consumer’s premises is a part of distribution system” and “last mile connection belongs to Distribution Licensee and accordingly remunerative principles would apply to it through distribution licensee only”.

xii) This finding has not been challenged by the OPTCL or CESU in the Apex Court. Despite that, the State Commission has not passed the consequential orders directing the OPTCL/CESU to implement the above directions on the basis of the findings given in the Appeal No.30 of 2012.

xiii) Aggrieved by this, the present Appeal has been filed by the Appellant.

4. The learned Senior Counsel for the Appellant, has made the following submissions:

“In the judgment dated 21.12.2012, this Tribunal in Appeal No.94 of 2011 specifically directed the State Commission to pass consequential orders keeping in view of the observation within a period of two months from the date of judgment. The State Commission however, did not take steps to pass any consequential orders within the time frame as directed. Finding no way out, the Appellant on 21.3.2013 filed an Application before the State Commission to pass the consequential orders pursuant to the aforesaid directions. On 1.8.2013, the State Commission disposed of the said Petition by dismissing the same by giving a contrary

finding from that of the finding given by this Tribunal. This order passed by the State Commission giving observation in the Impugned Order would amount to over reaching the judgment of this Tribunal and would amount to violation of the directions given by this Tribunal. Hence, the same may be set aside”.

5. The learned Counsel for the Respondents in justification of the Impugned Order has made elaborate submissions.
6. Both the parties have cited number of authorities to substantiate their respective submissions.
7. In the light of the rival contentions, the following questions would arise for consideration:

(a) Whether the State Commission has ignored the finding and conclusion arrived at by this Tribunal in para 21 to 24 of the judgment dated 21.12.2012 passed by this Tribunal in Appeal No.94

of 2011 in which it was held that the Appellant did not deposit the amount voluntarily but deposited the same on demand?

(b) Whether the OPTCL and CESU have complied with the directions given in the judgment dated 14.12.2012 and 21.12.2012 passed in Appeal No.30 of 2012 and Appeal No.94 of 2011?

8. The crux of the issue is as to whether the State Commission failed to pass consequential orders pursuant to the directions given in the judgment in Appeal No.94 of 2011 dated 21.12.2012.
9. Further more, in the absence of the Appeal as against the judgment in Appeal No.30 of 2012, whether it is proper for the State Commission for not issuing the directions to the Respondent to comply with the direction given in both the judgments of this Tribunal.

10. Thus, the main issue would relate to the alleged violations of our directions given in the two judgments i.e Appeal No.30 of 2012 dated 14.12.2012 filed by OPTCL and Appeal No.94 of 2011 dated 21.12.2012 filed by T S Alloys Limited.
11. The findings and directions which have been given in Appeal No.30 of 2012 dated 14.12.2012 filed by OPTCL are as follows:

“ xxx xxx xxx xxx

24. Conjoint reading of the Commission’s Order dated 22.7.2006, review petition and Commission’s Review order dated 26.4.2011 would make it amply clear that the direction at (ii) was neither given in order dated 22.7.2006 nor prayed for in the review petition. The issue relating to supervision charges with respect of works taken up by the Appellant on behalf of consumer was not an issue before the Commission in case no. 36 of 2005. It was also not an issue raised by the Appellant in the Review Petition. Therefore, the Commission did not have power to give ruling on this issue in review order as discussed in para 18 above.

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44. In view of our findings to last question above that last mile connection belongs to Distribution Licensee

and accordingly remunerative principles would apply to it through distribution licensee only.

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57. In the light of our above findings, the Appeal is partly allowed to the extent indicated in paragraphs 24 and 44 in the body of the judgement. However, there is no order as to costs.”

12. The findings and directions which have been given in Appeal No.94 of 2011 dated 21.12.2012 filed by the Appellant are as follows:

“xxx xxx xxx xxx

21. Having perused all the records made available to us, we are of the view that the tenor of the letters from OPTCL to Appellant reflects the dominating and commanding position of the OPTCL while dealing with the consumers.

xxx xxx xxx xxx

24. From the above discussions it is evident that the Appellant did not deposit the amount voluntarily but deposited the same ‘On demand’. The question is answered accordingly.

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35. Thus, the 2nd respondent was not entitled to collect the Infrastructure Loan from prospective EHT consumers.

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43. In the present case the 2nd respondent did not make any prayer for stay of Commission's order and, therefore, the same was operative when the demand for supervision charges was made. The 2nd respondent ought to have followed the Commission's order and collected only 6% of total cost of the line as supervision charges. The 2nd Respondent has violated the Commission's order by charging 16% supervision charges.

44. In the light of above findings, we find it appropriate to direct the Commission to pass consequential order keeping in view the above observations within two months from date of this judgment.

45. The appeal is allowed".

13. According to the Appellant. despite the directions given in both the judgments in two Appeals, the State Commission did not pass the consequential orders within the period of two months and the Appellant itself filed an Application with a prayer. Ultimately, the Impugned Order has been passed

on 1.8.2013 rejecting the application filed by the Appellant praying for passing the consequential orders relating to the Appeal No.94 of 2011. The order Impugned dated 1.8.2013 is as follows:

“6. After perusing all the records available and taking note of the observation of the Hon’ble Tribunal in the remand order we find that the agreement between OPTCL and M/s. Rawmet was amended on 27.07.2006. Therefore, it was executed when the Order of the Commission dtd. 22.07.2006 was in full force. Both the Petitioner and OPTCL were fully aware of the contents of the Commission’s order where the Commission had disapproved collection of money from the consumer by OPTCL. Both the parties have professionally

qualified people in their Organization and also the benefit of legal advice from the Counsels in such a situation were available to them. It is difficult to hold on the basis of material available on the record that the agreement between the Petitioner and OPTCL have been signed under duress.

7. The Order of the Commission dtd. 22.07.2006 has been upheld by Hon’ble ATE. Therefore, parties are directed to implement that Order.

8. *Accordingly, the instruction of the Hon'ble ATE in Appeal No. 94/2011 is disposed of."*

14. According to the Appellant, the Impugned Order passed by the State Commisison on 1.8.2013 is completely contrary to the findings given in the judgment dated 21.12.2012 in Appeal No.94 of 2011 and the observations made by the State Commission are completely contrary to the findings given by this Tribunal and as such, the Impugned Order amounts to over reaching of this Tribunal.
15. The Appellant submits that subsequent to the judgments rendered by this Tribunal, it wrote letters to the CESU and OPTCL on 28.8.2013 and 29.8.2013 requesting for the compliance of the directions in the judgment dated 14.12.2012 and 21.12.2012. There was no response.
16. The learned Senior Counsel for the Appellant would submit that with reference to the various aspects such as supervision charges, construction of transmission line,

scheme for sharing of service line expenditure on remunerative principles and infrastructure loan of Rs.10.00 lakhs per MW with interest etc, the findings have already been given by the State Commission as well as by this Tribunal.

17. The question now is whether our directions given in our judgment dated 14.12.2012 and 21.12.2012 have been complied with by the State Commission by passing consequential orders and by giving directions to the Respondent in line with the findings and directions given by this Tribunal.

18. If we peruse the Impugned Order dated 1.8.2013, carefully, it is evident that the State Commisison, after ignoring our directions indicated that our directions are invalid and rejected the prayer of the Applicant in the Application filed by the Appellant in case No.23 of 2013 to pass the

consequential orders by indirectly criticizing the Appellant as well as this Tribunal.

19. This Tribunal has in the judgment dated 21.12.2012, specifically held that the Appellant did not deposit the amount voluntarily but deposited the same on demand. In fact, we found that the OPTCL, the Second Respondent was not entitled to collect the infrastructure loan from the prospective consumers and on the basis of this finding, we directed the State Commission to pass the consequential orders directing the Respondent keeping in view the observations within two months from the date of the judgment. But the State Commission instead of complying with the directions by passing consequential orders indicated in the Impugned Order that no consequential orders need be passed since the agreement between the Appellant OPTCL have not been signed under duress and the same is voluntary.

20. At the risk of repetition, it is to be stated that this Tribunal has categorically held that the deposit was not voluntary but it was deposited on demand. But in the Impugned Order passed by the State Commission in pursuance of our Remand Order wrongly held that there is no material to hold that the Agreement was signed by the parties under duress. The State Commission in the Impugned Order directed the parties to implement the Order earlier passed by the State Commission which was not upheld by this Tribunal.

21. This would make it clear that the State Commission has not only violated our directions but also deliberately refused to pass the consequential orders putting the blame on the Appellant. In the said order, the State Commission criticized the conduct of the Officers of the Appellant by observing that the parties have professionally qualified people in their organization and also the benefit of legal advice from the Counsel in such a situation were available to them and

therefore, the agreement could not have been signed under duress but have been signed voluntarily. This is exactly contrary to the findings rendered by this Tribunal. This is very unfortunate.

22. This is nothing but a judicial indiscipline. We are pained to observe that the Impugned Order rather reflects incompetence, impertinence as well as insubordination indicating that the State Commission's attitude that it was not inclined to follow the directions issued by the Appellate Tribunal.
23. This is purely insubordination. We can even condone the inefficiency and advise them for improvement but, not insubordination to the Tribunal.
24. In this context, with great anguish, we have to observe that we have been watching for several years, the unfair conduct

of this Commission through its various orders which bent upon violating all our directions given in our every judgment.

25. There is an indication in the Impugned Order justifying for not following our directions and indirectly holding that the Order of the Tribunal was wrong. This conduct reflects utter indiscipline on the part of the quasi judicial authority which is expected to know law and judicial propriety.

26. Some of the decisions which are quite relevant with regard to judicial discipline which have to be followed by the Subordinate authorities. They are as follows:

(a) AIR 1961 SC 182 (Bhopal Sugar Industries Limited vs ITO)

(b) (1988) 3 SCC 579 (Jain Exports Private Limited Vs Union of India)

(c) 1992 Supp (1) SCC 443 (Union of India Vs Kamlakshi Finance Corporation Ltd)

(d) (2011) 3 SCC 573 (RBF Rig Corporation Vs Commissioner of Customs)

27. The crux of the principles which have been laid down in those judgments are as under:

(a) The quasi judicial authority who is subordinate to the Tribunal cannot sit in the Appeal over the judgment of the Tribunal. It was not open to the judicial authority to say that the order of the Tribunal was wrong.

(b) In the hierarchy system of the Courts which exists in the Court, it is necessary for each lower tier to accept loyally the decision of the higher tiers.

(c) The orders of the Tribunal is binding on the lower authorities who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the Appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the Appellate authority is not “acceptable” to the lower authority; it cannot be the

ground for not following the directions of the Appellate authority. If this healthy rule is not followed, the result will only be undue harassment to the parties and chaos in administration of laws.

28. In yet another recent judgment of the Hon'ble Supreme Court in Civil Appeal No.3415 of 2007 in the case of Oil & Natural Gas Corporation Limited Vs Western Geco International Limited, Hon'ble Justice T S Thakur heading the Bench of Hon'ble Supreme Court has made following observations about the necessity for the judicial authority to adopt judicial approach while deciding the issue. The relevant observations are as follows:

“The first and foremost is the principle that in every determination, whether by a Court or other authority that affects the rights of a citizen or leads to any civil consequences, the Court or authority concerned is

bound to adopt what is in legal parlance called a 'judicial approach' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the Court or the authority does not have to be separately or additionally enjoined upon the fora concerned. **What must be remembered is that the importance of judicial approach in judicial and quasi judicial determination lies in the fact so long as the Court, Tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bonafide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in**

that sense acts as a check against flaws and faults that can render the decision”.

29. The above observations made by the Hon'ble Supreme Court would squarely apply to the present case.
30. In this matter, there is total lack of judicial approach on the part of the State Commission. In fact, in the judgment of the Hon'ble Supreme Court that importance of the judicial approach in the quasi judicial determination lies in the fact that the Court or Tribunal while exercising the powers that may affect the rights of the parties shows fidelity to judicial approach, the quasi judicial authorities cannot act in an arbitrary, capricious or whimsical manner. The judicial approach ensures that the authority acts bonafide and deals with the subject in a fair, reasonable and objective manner. The decision of the Quasi judicial authority should not be actuated by extraneous consideration.

31. On going through the Impugned Order, we feel that the Commission without adopting the judicial approach by way of over reaching the directions and judgments acted which shows lack of bona fide, lack of fairness and lack of responsibility. Even though the earlier order passed by the State Commission was set aside by this Tribunal, the State Commission actuated by extraneous consideration virtually setting aside our directions through the Impugned Order for the purpose of confirming their own orders which were held to be invalid by our judgment.

32. The following factual aspects to be reiterated while coming to the conclusion:

(a) The State Commission failed to pass the consequential orders pursuant to our directions given in the judgment dated 21.12.2012 passed by this Tribunal in Appeal No.94 of 2011.

(b) The State Commission did not incline to initiate the proceedings for passing consequential orders within a period of two months from the date of the judgment i.e. 21.2.2011, two months from the date of the judgment dated 21.12.2012 pursuant to the directions given in Appeal No.94 of 2011.

(c) The State Commission did not care about our directions which have been given in both the judgments in Appeal No.30 of 2012 dated 14.2.2012 and Appeal No.94 of 2011 dated 21.12.2012 which became final in the absence of challenge before the Apex Court by the Respondent. Though the State Commission is well aware that both these judgments are binding on the Commission, it did not act upon the judgments. On the other hand, the State Commission gave different interpretation which is quite contra to the judgment of this Tribunal in violating the judicial discipline.

(d) Thus, the State Commisison has deliberately failed to follow the judicial discipline in spite of the fact that the judgments of this Tribunal are binding on the State commission. On the other hand, the State Commission has over reached the two judgments by way of observation and interfering into the issues which have already been decided by this Tribunal.

33. In the light of the above circumstances we can again give a direction to the State Commission to comply with our judgments dated 14.12.2012 and 21.12.2012 even now. But taking note of the way in which the State Commission conducts itself by passing the Impugned Order dated 1.8.2013 criticizing the officials for the parties as well as indicating that this Tribunal's finding was wrong, we are afraid that if the matter is again remanded to the State Commisison for passing consequential orders, it would amount to giving an another opportunity to the State

Commission again to violate our directions. Therefore, we straightway hold that the Appellant is entitled to following reliefs without asking the State Commission to pass the consequential Orders:

(a) Refund of Supervision Charges-Rs.1,14,35,295.00 along with interest;

(b) Refund of Rs.6,04,08,260.00 towards construction of transmission line (inter State), switching station etc, as the Scheme is highly remunerative along with interest;

(c) Refund of interest on the amount of Rs.1.50 Crores deposited towards Infrastructure Loan.

34. Accordingly, the contesting Respondents are directed to refund the amount to the Appellant within one month from the date of this judgment, along with simple interest calculated @ 10% per annum.

35. The Appellant at this stage, seeks for directing for the imposition of cost on the State Commission for non compliance of our directions. It is also noticed that even earlier, in one another matter, we imposed cost on the State Commission for not having informed this Tribunal in their Review Petition about the dismissal of the Appeal filed by the State Commission before the Hon'ble Supreme Court. We are yet to be informed about the compliance of the said order. However, since, we have expressed our displeasure extensively by passing strictures over the conduct of the State Commission we feel that it is not necessary to impose cost in this matter, we hope that the State Commission may correct itself in future proceedings without giving any room for any complaint of non compliance of our directions.

36. To Sum-Up

The Impugned Order suffers from various infirmities which is liable to be set aside.

Accordingly, the Impugned Order is set aside.

37. The Appeal is allowed. The contesting Respondents are directed to comply with above directions without fail within the time frame.

38. There is no order as to costs.

39. Pronounced in the Open Court on this **29th Day of November, 2014.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:29th November, 2014

REPORTABLE/~~NON-REPORTABLE~~