

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 39 of 2002

In the matter of
Petition filed by M/s Balaji Electro Smelters Ltd., Yavatmal
In respect of withdrawal / termination of wheeling of NTPC Power from 15%
unallocated quota to export oriented Ferro Alloy Industries

Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member

O R D E R

Dated: March 24, 2003

M/s Balaji Electro Smelters Ltd. (BESL), Yavatmal have submitted an application dated 7th December 2002 challenging the withdrawal by the Maharashtra State Electricity Board (MSEB) of NTPC power from the 15% unallocated quota to their unit with the following prayers:

- a) *To direct MSEB to withdraw the notice dated 23rd July 2002 for discontinuation of NTPC power.*
- b) *To restrain MSEB from reviewing the policy of the Ministry of Power in respect of wheeling of NTPC power to export oriented Ferro Alloys Industries, and to restrain them from charging tariff different from the NTPC tariff for the power consumed by the Petitioner.*
- c) *To restrain MSEB from giving effect to their decision till the Petition is decided by the Commission.*
- d) *To direct MSEB to release wheeling of additional allocated 0.95 MW NTPC power to the Petitioner.*

2. The matter was heard for admission on 3rd February 2003. Shri Raghunath Kaparathi, Managing Director of BESL, stated that theirs is a small scale Ferro Alloy unit whose main raw material is power and which is situated in a backward region. He submitted that, after considering representations for providing power to exporting ferro alloy producers at internationally competitive rates and after wide consultation, Ministry of Power (MoP), Government of India asked the State Electricity Boards to wheel power out of NTPC's 15% unallocated quota to such units on certain conditions. Accordingly, BESL applied to MoP in 1996 for allocation of NTPC power for 18 hours off peak. Government of Maharashtra (GoM) had concurred to the supply of 2.6 MW on 26.11.1998, and MSEB agreed to wheel the NTPC power and release it from 12.1.1999. BESL were also given NOC for an additional quota of 0.95 MW by GoM out of the unallocated NTPC power on 9.3.2000.

3. Shri Kaparathi submitted that, inspite of the above, MSEB issued notice to BESL shortly thereafter to the effect that wheeling of NTPC power to the unit would cease from 1st May 2000. BESL petitioned the Commission, and the Commission issued an Order for continuation of NTPC power supply and further release of 0.95 MW of NTPC power through wheeling. He stated that MSEB had then filed an application on 24.09.2001 regarding allocation of NTPC power to exporting units before the Commission, on which another Order was passed on 11.4.2002. The Commission had carefully considered various issues related to this matter before passing its two Orders.

4. Shri Kaparathi submitted that, around three months after the Commission's last order, MSEB had issued BESL a notice dated 23.7.2002 to the effect that *“while granting permission to give NTPC power tariff facility to Ferro Alloy Industries, the Government of India vide their letter No. L/R/93-45/C.T dated 6.4.1994 has stipulated that this arrangement would be subject to a six monthly review and this arrangement is also subject to availability of surplus power with the central power company and the region in which State is located is surplus in power. MSEB has reviewed the position of supply of NTPC power and has concluded that it is not feasible for MSEB to continue the NTPC power. This letter may please be treated as six months notice for discontinuation of NTPC power. ... will be billed as per tariff in force from January 2003 onwards.”* Moreover, allotted NTPC power supply to BESL had been discontinued before the expiry of the six month notice period.

5. Before approaching the Commission again with the present petition in December 2002, BESL had sought a copy of the GoI letter referred to in MSEB's notice, which was received by them in October, and had also approached GoI. Shri Kaparathi submitted that the Commission had taken note of the GoI letter before passing the second Order, and had decided against discontinuing the existing dispensation taking its contents into consideration. Therefore, MSEB's notice is illegal. MSEB have not appealed against the Commission's Orders, which are now binding on them.

6. Shri Kaparathi submitted that Ministry of Power (MoP) has been monitoring BESL's compliance, and quarterly returns with supporting documents are being submitted regularly. In accordance with the Commission's directives, BESL are also submitting quarterly returns to MSEB regularly. MoP, in their communications to MSEB, have also mentioned that BESL's exports for the period ending September 2001 are higher than the NTPC power consumed by them, and that BESL are exporting more than 90% instead of the required minimum of 75%. He submitted that there is, therefore, no deviation from the conditions on the basis of which MSEB could withdraw the existing dispensation.

7. Shri Kaparathi submitted that the supply of NTPC power to ferro alloy industries, including BESL, is a national policy formulated by the MoP, and MSEB is not authorised to review or modify it. Since MSEB have done so unilaterally and without consulting GoM or GoI, the notice issued by them is illegal and arbitrary. In fact, review of the policy has been separately initiated by GoI, who have recently sent a draft to GoM. GoM have in turn sent the draft to MSEB for comments. Neither MoP nor GoM have concluded the review of the existing policy of allocation of NTPC power to ferro alloy units and, therefore, the policy continues to be valid and in force. The unilateral decision taken by MSEB amounts to encroachment on the authority and jurisdiction of GoI.

8. Shri Kaparathi submitted that, in their response, MSEB have stated that they are entitled to levy wheeling charges and electricity duty on NTPC's supply. However, at the time of framing of the policy by GoI, it had been stated that *"keeping in view of the recommendations of Ministry of Commerce and also the fact that the Ministry of Steel considers the high power tariffs to be a factor affecting the export of Ferro alloys, the MoP is considering a proposal to supply power at break even rates to the export oriented Ferro alloy units as an export promotion method"*. Shri Kaparathi submitted that, inspite of this, BESL are being charged more than double the break even tariff, which should be 100 paise/kWh as considered by the MoP, inclusive of all wheeling charges, duties, etc. Moreover, taking into consideration the difficulties in competing in the international market, the MoP, with the concurrence of GoM, had agreed to release 24 hours power to M/s Universal Ferro Allied Chemicals Limited, as against 18 hours to BESL. He pointed out that the power tariff for ferro alloy units in other States is much lower than in Maharashtra. In Orissa, concessional power is given even without export obligations. He submitted that no such support to this industry is being given by GoM, and urged the Commission to consider supply of 24 hours NTPC power to them.

9. Shri Kaparathi drew attention to some aspects of the Availability Based Tariff (ABT) under which BESL obtains power from NTPC's unallocated quota. After receiving complaints about shortfalls in the allocated quota from the Central sector to various States and grid indiscipline, CERC introduced the ABT system after wide consultation to enforce grid discipline and ensure equitable distribution of the tariff burden and supply of power from the Central Sector to the States. He cited the tariff dispensation for thermal power stations of NTPC from CERC's Order dated 4.1.2000.

"Allocation of total capacity of Central sector station is made by Government of India from time to time, which also has an unallocated portion. Allocation of unallocated portion shall be made by the GoI from time to time for total unallocated capacity. The total capacity share of any beneficiary would be sum of its capacity share plus allocation out of the unallocated portion".

Thus, both unallocated and allocated portions are distributed as per the ABT system. Ferro alloy industries are provided power from the unallocated portion. Under the ABT system, the beneficiary States are to submit their demand schedule for 96 time blocks in a day. Thereafter, after taking into account the availability from Central power stations, power is to be supplied as per the eligible share of the States in accordance with their demand schedule. MSEB's requirement would be less during the off peak hours, and they may not claim their full share at other times also in order to avail of incentives. In this background, and taking into account MSEB's reply to the Petitioner, MSEB should file a petition before the CERC in order to sort out problems of shortfall, if any, from the Central power stations, and to modify the ABT system if desired. In fact, BESL came to know that MSEB had overdrawn power and paid penalties, and BESL were receiving supplementary bills on account of such penalties. On the other hand, MSEB did not pass on any share on account of the incentives they received. Shri Kaparathi urged the Commission to look into this and issue directives to refund supplementary bills drawn on account of penalties for overdrawal of power by MSEB.

10. Shri Kaparathi challenged MSEB's contention that they are incurring large revenue losses by supplying power to units such as BESL. He pointed out that BESL are located close to the generating station and adjacent to the MIDC sub-station, and there is a separate line in form of 33 KV express feeder from the sub-station to their unit. One meter has been installed in BESL's premises, and the other is located in the MIDC sub-station. Thus, a foolproof system is in place. BESL had requested

MSEB to furnish data on T&D losses, without response. In fact, MSEB is gaining by supplying power to the unit. Shri Kaparathi concluded by pointing out, that by giving notice of discontinuance of NTPC power supply, MSEB are also violating the provisions of the Commission's Tariff Order in-as-much as it amounts to a change in the tariff.

11. Ms Deepa Chawan, Counsel for MSEB, stated that MSEB are entitled to certain charges for supplying power. She stated that GoI had formulated a scheme for ferro alloy units to draw power from NTPC, and communicated it to the States. One of the guidelines of the scheme is that there should be a capacity of 7.5 MW. In the BESL case itself, this requirement has been done away with by GoI. In the case of M/s. Universal Ferro & Allied Chemicals, 24 hours supply was granted, but only 18 hours to BESL. Thus, the guidelines are not uniformly applied and there are disparities in the treatment of similar electricity consumers. GoI had directed the discontinuation of power to Universal Ferro because they had defaulted on export obligations.

12. Counsel for MSEB submitted that the scheme itself provides for review after six months. The issue is of who is to take up such a review. BESL claims that the relevant authority is GoI, but nothing is forthcoming from them. The question is whether the supply of NTPC power to the ferro alloy units is to be maintained even in the case of shortfall. Counsel rejected BESL's claim that penalty has been charged, citing the bills produced by BESL itself. In fact, MSEB pays penalty to NTPC for overdrawal. She stated that there is no fixed allocation from the unallocated quota which MSEB is receiving from the NTPC. She submitted that there is a need for drawing up a proper scheme for the purpose which covers all the issues in detail, and is clear and transparent.

13. Counsel further drew the Commission's attention to the parawise reply submitted by MSEB, and argued that this is basically a contractual matter between MSEB and NTPC. She submitted that, owing to the practical difficulties cited in the reply, and in exercise of their right under the contractual arrangement to review the situation, MSEB decided to issue the impugned notice. Moreover, MSEB have not disconnected power to the unit, as alleged by the Petitioner, but only the NTPC supply, and have started billing in accordance with the MERC Tariff Order dated 10th January 2002. Counsel further clarified that, subject to finalisation of the current petition, the Petitioner can make payment at the NTPC rate though the billing has been done at the MERC rates.

14. In response to a query regarding MSEB's unilateral decision to review an arrangement which was based on sovereign policy directives, Counsel for MSEB submitted that the matter had earlier been taken up with both GoI and GoM. However, in the absence of any response from either, or an institutional mechanism to settle the issues, and keeping in mind the financial loss to MSEB, a decision was taken to review the scheme prospectively.

15. The Commission expressed reservations about its jurisdiction to entertain such a petition since it concerned a national policy announced by the Ministry of Power, Government of India. Counsel for MSEB submitted that, under Section 29 of the ERC Act, the Commission is fully empowered to entertain such matters. The Commission suggested that MSEB should file a petition before the CERC to sort out the issues of shortfall in the NTPC share, modifications in the ABT system, etc.

16. The Commission, upon perusal of written submissions and oral arguments of both the contesting parties, hereby directs:

- i) MSEB to maintain the status quo ante in the matter till the emergence of clear directions in the matter of the MoP policy review, since the Petitioner has met his obligations for availing of such power.
- ii) MSEB to rectify the bills already issued to the applicant in line with direction (i) above and give necessary credit to correctly reflect the outstanding and avoid billing disputes arising out of the same.
- iii) That the right of MSEB to argue its case for review of the present scheme / policy before the Commission covering all the legal points is upheld without prejudice.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

(A.M. Khan)
Secretary, MERC

Bombay, March 24, 2003