

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.29304 of 2013

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Date: 07-4-2015

Between

Jai Laxmi Metals Pvt. Ltd.,
Works: Plot No.36,
APIIC Industrial Park,
Gollapuram, Hindupur,
Anantapur district, Andhra Pradesh,
Rep. by its Director Pradeep Kumar Agarwal

... Petitioner

and

The Southern Power Distribution
Company of Andhra Pradesh Ltd.,
Tirupati, Chittoor district,
Rep. by its Chairman and MD;
and 4 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.29304 of 2013

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Order:

Heard Sri D.V.Nagarjuna Babu, learned counsel
appearing for the petitioner and Sri O.Manohar Reddy,
learned Standing Counsel appearing for the respondents -
SPDCAPL.

2. This writ petition is filed seeking to declare

(a) the action of the respondents 1 to 4 in disconnecting the petitioner's power supply without issuing any notice as contemplated under Section 56 of the Electricity Act, (b) levy and collection of development charges by the respondents 1 to 4 for release of 3500 KV load to the petitioner pursuant to the Memo.E-2011-01-11-04-006, dated 01-3-2011, of the 1st respondent as illegal, arbitrary, irrational and contrary to Sections 43 and 46 of the Electricity Act, 2003 if necessary by declaring the order of the 5th respondent in R.P.No.1 to 4/2005 dated 24-8-2005 as illegal, arbitrary and unjust and

(c) action of the respondents 1 to 4 in not refunding the development charges collected for the release of 3.5 MVA load to the petitioner together with interest at 24% per annum as per Clause No.5 of APERC (Electricity Supply Code) Regulation No.2/2004 as highly illegal, arbitrary, unjust and contrary to the orders of this Court dated 05-10-2010 in W.P.No.4010 of 2005 and batch.

3. The learned counsel appearing for the petitioner submits that the issue involved in the present writ petition is squarely covered by the common order dated 05-10-2005 in W.P.No.4010 of 2005 and batch passed by the learned single Judge of this Court, wherein the batch of writ petitions were allowed observing as under:

“From the above, it is clear that Clauses 5 to 11 stand deleted from the date of Regulation 3 of 2004 i.e. with

retrospective effect. It is settled principle of law that a subordinate legislation can never be made with retrospective effect even assuming that the said deletion amounts to amendment of the rules/regulations. Further, the Distribution Companies were directed to file all relevant data with the Commission within 60 days of the issue of the order, till a separate regulation under Section 46 of the Act is made. Since the clauses in question are not notified as required under Section 181 and were not placed before the Legislature of the State for its approval, the deletion shall be treated as *non est* in the eye of law. Therefore, applying such a law and making demands for payment of notional developmental charges for new connections and for additional loads is arbitrary and illegal.”

4. In the aforesaid circumstances, the present writ petition is also allowed in terms of the ratio laid down by the learned single Judge of this Court in the said common order dated 05-10-2010 in W.P.No.4010 of 2005 and batch. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

07th April, 2015.
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HON'BLE SRI JUSTICE R.KANTHA RAO

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