

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 27669 of 2004

ORDER:

This Writ Petition is filed for the following relief:

“....to issue an appropriate Writ, Order or Direction more particularly one in the nature of Certiorari, calling for the records of the impugned order in Letter No.CMD/Dir (Fin)/GM (Rev)/JAO(HT)/D.No.R-1057/05 dated 29.04.2005 passed by the 2nd respondent and to quash the same; and consequently to direct the 1st respondent to forthwith refund Rs.1,22,09,645.21 and all other amounts levied, demanded and collected from the petitioner in respect of additional charges for availing electricity supply at 33 KV instead of 132 KV upto 12.10.1987, including the additional charges for delayed payment in respect thereof; and further to direct the 1st respondent to pay to the Petitioner interest on such sums at the prime lending rate from time to time of the nationalized banks and / or pass such further or other orders as this Hon'ble court may deem fit and proper so that justice may be done.”

2) In a nut-shell, brief facts of the case are that, the petitioner company is engaged in manufacture of paper and paperboards at its factory situated in a backward and tribal area of Sarapaka Village, Burgampahad Mandal, Khammam District. The 1st respondent, being the successor of the erstwhile APSEB and the APTRANSCO supplying the electricity to the petitioner's factory. The petitioner, vide letter dated 02.06.1976, requested the erstwhile APSEB to extend electricity supply at 33 KV, for which the Chairman of the APSEB communicated by a letter dated 05.06.1976 stating that they would have no objection for extending 33 KV supply to the factory premises and consequently the Secretary of the APSEB by a letter dated 23.10.1976 communicated that it had been decided by the Board to extend

supply at 35 KV through a double circuit line from the proposed 132/33 KV substation at Paloncha, taking the firm power as 9000 KVA and intimating that the estimated cost of extension of electricity supply will have to be paid as a Voluntary Loan Contribution. Accordingly, both the parties entered into an Agreement dated 10.10.1977 for supply of the electricity at 33 KV and the petitioner paid an amount of Rs.40 Lakhs as Voluntary Loan Contribution towards the cost incurred by the Board for the extension of supply to it. Upon the arrangements made by the petitioner, 33 KV receiving Substation was installed in April, 1979 and the petitioner commenced commercial production on 01.10.1979. While the things stood thus, APSEB issued B.P.Ms.No.607, dated 21.07.1981 prescribing different voltages for supply for different contracted loads and that the existing HT consumers availing supply at a voltage less than the specified voltage have to make necessary arrangements for changing their supply system within a period of six months so as to avail supply at the specified voltage and the same was communicated to the petitioner in the month of September, 1981. Thereafter, the petitioner vide letter dated 29.09.1981 to the Secretary, APSEB, explained the difficulties in changing over from 33 KV to 132 KV and requested for exemption from the change over and the payment of surcharge with effect from 01.03.1982. Though the petitioner reiterated its request vide representations dated 25.01.1982 and 24.02.1982, the Board informed, vide letter dated 17.03.1982, that it would not accede to the same and commenced levying additional surcharge at 7.5% from 01.03.1982 onwards. Subsequently, as the petitioner-company required additional power

for the expansion of the factory, it applied to the Board for increasing the contracted demand by 6 MVA, in two stages, upon that, the Board stipulated a condition that the petitioner should take supply of electricity only at 132 KV. Agreeing to the said pre-condition, the petitioner completed the installation of 132 KV system by 14.07.1987.

It is the further case of the petitioner that the Board itself never took any steps to erect 132 KV transmission line for supply to the petitioner at 132 KV from 01.03.1982 or even from 01.03.1983 and further submitted that the Board has given the tentative estimate of service line charges for laying a 132 KV line for the first time only on 29.01.1987 and a final estimate was informed by letter dated 18.05.1987. Thereafter, the petitioner paid the entire estimated service line charges of Rs.36.446 lakhs promptly and the Board commenced the supply to the petitioner at 132 KV only on 12.10.1987. Further, relying on the judgment of the Supreme Court in **Hyderabad Engineering Industries Vs. APSEB¹**, the petitioner made a representation to the Board for consideration of the special facts and circumstances for exempting it from payment of the additional charges at 7.5%. The Board has disposed of the said representation and communicated the Order vide letter dated 14.12.1988 extending time from six to 18 months for levying additional charges and directed to pay the amounts due with all additional charges. Aggrieved by the same, the petitioner filed W.P.No.6348 of 1989, and the same was dismissed on 07.06.2001, against which an Appeal was preferred vide W.A.No.1753 of 2001 and the Division Bench was pleased to allow

¹ AIR 1988 SC 985=(1988) 2 SCC 181

the same on 19.11.2001 with a direction to the respondent to consider the matter afresh in accordance with law and pass a speaking order. Subsequent to the Division Bench Order dated 19.11.2001, so many times, the petitioner requested the respondent to fix the early hearing, but went futile. Finally, taking reference from the petitioner's letter dated 06.09.2004, the 2nd respondent issued the impugned order dated 29.04.2005 rejecting the representation of the petitioner. Aggrieved by the same, the present Writ Petition is filed.

3) Heard the learned counsel for the petitioner and the learned Standing Counsel for the TSTRANSCO.

4) In this case, as a matter of fact, whether the power is ready to be supplied at the voltage, at which the consumer has to avail, or not, is the question of fact.

5) At the outset, it may be noted that vide B.P.Ms.No.607, dated 21.07.1981, the respondent Board required the existing H.T. consumer to receive energy at higher voltages depending on the quantum of contracted demand and also required such of those consumers who continued to receive at lower voltage to pay additional surcharge as prescribed. However, the same was questioned by the petitioner and the Hon'ble Supreme Court in Hyderabad Engineering Industries Limited case (1 supra), upheld the power of the Board to require the H.T. consumers to receive energy at higher voltages and also the power to impose additional charge on the consumers continuing to receive energy at lower voltages.

6) In the similar circumstances of the case, a Division Bench of this Court in **The Associated Cement Companies Ltd., v Andhra Pradesh State Electricity Board**² held as follows:

“15. We are inclined to take the view that the respondent-Board is not justified and that the imposition of additional charge for the said period on the petitioner is arbitrary and unreasonable in view of the fact that the respondent was not in a position to supply energy to the petitioner at 132 KV during the said period and till 9.11.1984.

16. It is stated that H.T. consumers availing supply at a lesser Supply (rate) should make necessary-arrangements for changing their supply system within a period of six months to avail the supply at the higher voltage. It is then stated that failure to make arrangements to receive supply at the specified voltage within the specified period would attract additional charges for low voltages “for compensating the Board against transmission and transformation losses and cost of additional capital incurred” at the rates indicated. The additional capital incurred mentioned obviously is in respect of making available the supply to the consumers concerned at the higher voltage. A reading of this condition (1) makes it obvious that the additional charges could be imposed only if the Board was in a position to supply energy at the higher voltage and yet the consumer was not ready to receive supply at the specified higher voltage. Otherwise, it would lead to the unreasonable and absurd result that even though the Board was not in a position to supply the energy at the higher voltage, the consumer should pay for not receiving the energy at the higher voltage. It would be unreasonable for the Board to charge for the period consumer was not in a position to receive supply when in fact the Board was not ready and prepared to supply the energy at the higher voltage.

.....We are unable to accept the contention advanced on behalf of the Board that the obligation of the Board to supply energy at the specified voltage was distinct and separate from the obligation imposed under the new

² AIR 1997 Andhra Pradesh 142

condition (1) on the consumer to be ready to receive the supply at the specified voltage, and that even if the Board was not ready to supply energy at the specified voltage it could demand additional charges because the consumer was not ready to receive the supply within the period allowed. In the context, we have to hold that the period allowed was both for the petitioner-consumer as well as the Board and that the obligation to receive supply was dependent on the reciprocal obligation on the part of the Board to be ready to supply. We have also to hold that to levy additional charges on the basis of the new condition (1) when the Board itself was not in a position to supply energy at the higher voltage would be unreasonable and arbitrary.

20.This clearly establishes that the Board did not activate itself to supply energy to the petitioner at 132 KV even by 23.3.1984. In the circumstances, whatever arrangements the petitioner made, it would not be in a position to avail such supply till the Board was ready, on its part, to supply energy at 132 KV.”

7) The above judgment was also followed in **Andhra Pradesh State Electricity Board and Another v Andhra Sugars Limited³ and KCP Ltd., (Rama Krishna Cements), Guntur District v APSEB, Somajiguda, Hyderabad and Others⁴**. Therefore, the issue involved in this case is no longer *res integra*.

8) The only crucial aspect, which is required to be considered in this case, is that the readiness on the part of the respondents-DISCOM for supplying the power at 132 KV. It is not in dispute that the petitioner has completed the installation of 132 KV System and received approval from the Chief Electrical Inspector only on 14.07.1987 and the supply was released on 12.10.1987. Though it is contended by Sri R. Vinod Reddy, learned standing counsel for TSTRANSCO that the final amount of the service line charges was

³ 2004 (6) ALT 303 (D.B.)

⁴ 2011 (6) ALD 270 (D.B.)

paid on 17.06.1987, the same hardly makes any difference. While so, on this aspect, it is the contention of the learned counsel for the petitioner that the final estimate, with respect to the service line charges, was informed to the petitioner only on 18.05.1987 and immediately thereafter on 17.06.1987 the said amount was paid. It may be noted that the requirement of payment of service line charges itself was introduced only through B.P.M.S.No.693, with effect from 19.09.1985. A demand for service line charges were admittedly made for the first time on 18.05.1987, which was in fact paid by the petitioners by 17.06.1987. It is not the case of the respondents that the Boards system ready in all respects to supply power to the petitioners at 132 KV voltage even as on 17.06.1987. It is an admitted and undisputed fact that the installations were made ready to supply the power at the prescribed 132 KV voltage only with effect from 12.10.1987. In other words, the Board itself was not ready to supply the power at the specified voltage till 12.10.1987. In that context the interpretation which has been accredited by the Division Bench of this Court in **The Associated Cement Companies Ltd., (1 Supra case)**, is that the readiness on the part of the consumer “to avail supply at the specified voltage” presupposes the readiness on the part of the Board to supply power at the specified voltage. In the case on hand, there is no dispute that the respondent-Board came to be ready only on 12.10.1987. In other words, for the BPMS No.607, to be operated against the petitioner would only be with effect from 12.10.1987 and not prior to the said date. In those circumstances, the levy, demand and collection of any charges invoking B.P.M.S.No.607 without the Board’s system being not

ready to supply power is unjust and illegal, which cannot be sustained and the writ petition deserves to be allowed. As the pending disposal of the writ petition, the Bank Guarantees furnished by the petitioner have been encashed by the respondent unjustly and as such to the extent of encashed Bank Guarantee which required to be returned to the petitioners. Though the learned counsel for the petitioner seeks payment of interest, this Court is not inclined to accede to the same in the facts of the present case.

9) Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, the Miscellaneous Petitions, if any pending, shall stand closed.

Date:27.10.2016
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CHALLA KODANDA RAM, J.

