

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

[Special Original Jurisdiction]

WEDNESDAY THE SIXTH DAY OF APRIL, 2016

PRESENT
HONOURABLE SRI JUSTICE S.V. BHATT

WRIT PETITION No. 14565 OF 2010

Between:

Hindustan Zinc Limited
Visakhapatnam
Represented by its Senior Manager, Electrical,
Sri Vijaykumar Madhukar Patil ... Petitioner

V/s.

Eastern Power Distribution Company of
Andhra Pradesh Limited,
Represented by its Managing Director,
Sai Shakthi, Visakhapatnam & Ors. ... Respondents

Counsel for the Petitioner: Sri K.Gopal Choudary

Counsel for the Respondents: Sri O. Manohar Reddy
Sri S.Ravi
Sri P.Raghuram
Sri Srinivasa Rao Putluri
The Advocate General
M/s.Indus Law Firm

The court made the following: [order follows]

HONOURABLE SRI JUSTICE S.V. BHATT

WRIT PETITION No. 14565 OF 2010

ORDER:

Petitioner challenges Lr.No.APERC/E-205/DD-Dist/2010 dated 06/5/2010, inter alia, on the ground of violation of principles of natural justice and non-compliance with the requirement of Section 10 (7) of the Electricity Reforms Act.

2. With the assistance of the learned counsel appearing for the parties, I have perused the impugned communication. Learned standing counsel appearing for the third respondent in reply to the query of this Court whether the petitioner was put on notice or heard at any time before issuing the impugned communication fairly states that the third respondent while examining the issue of APGPCL generation and sharing energy and demand mechanism observed a few issues and basing upon such observation and consideration therein, the instant directives are issued.

3. This Court is of the view that the impugned communication has the potential of retrospectively alternating the memorandum of understanding in force between parties and imposes unexpected financial burden on consumer. The impugned orders are passed without hearing the affected party and hence, the impugned

communication is set aside. The matter is remanded to third respondent to consider and dispose of the issues already noticed in the impugned communication in accordance with law. The petitioner in terms of interim order dated 08/9/2010 paid 50% of the additional amount demanded by respondents 1 and 2. Since the matter is remanded to third respondent for consideration afresh, it is needless to observe that the demands, which were issued pursuant to the letter dated 06/5/2010, cannot be given effect to and the amount already deposited by the petitioner is subject to the outcome of the issue before the third respondent and if the petitioner is successful before third respondent, the deposit is required to be adjusted in current or future bills. The impugned communication is set aside on the sole ground of not affording opportunity to petitioner before a decision is taken. All the contentions are left open for raising and consideration by the Commission. The objection raised in the counter-affidavit about the availability of alternative remedy need not be considered for in the admitted fact situation the grievance attracts the jurisdiction of this Court under Article 226 of the Constitution of India.

4. Sri Srinivasa Rao on behalf of Commission makes a statement that the Commission will examine and pass appropriate orders after remand as expeditiously as possible, preferably within

three months from the date of receipt of the order. The statement is placed on record and accepted.

5. The writ petition is allowed. As a sequel, the miscellaneous applications, if any pending shall stand closed. There shall be no order as to costs.

JUSTICE S.V. BHATT

06/04/2016
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HONOURABLE SRI JUSTICE S.V. BHATT

WRIT PETITION No. 14565 OF 2010

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