

HONOURABLE SRI JUSTICE S.V. BHATT

WP.Nos. 26740, 24666, 24718, 25979, 31287, 34200, 25817, 37897,
33236, 40322, 29245, 25824, 25825 of 2015,
AND
WP.No. 1899 of 2016.

COMMON ORDER :

Heard Sri Challa Gunaranjan for petitioners, Sri Srinivasa Rao Putluri for first respondent, Sri Ravindra and Smt.J.Koteswari for DISCOM/respondents.

2. The petitioners challenge the order of first respondent in OP.No. 8 of 2015 [suo motu] dated 15/4/15 determining surcharge, additional surcharge, cross subsidy surcharge for the financial year 2015-16 and consequential demand as illegal, unconstitutional, arbitrary, contrary to the mandatory provisions of Electricity Act 2003 and the APERC [conduct of business] Regulations 1999.

3. The circumstances relevant for the disposal of the writ petitions are as follows:

i) The petitioners have consumed power for their units from open access. Now the controversy is about payment of additional surcharge and cross subsidy surcharge demanded by DISCOM by reference to the order in OP.No. 8 of 2015 of the first respondent.

ii) On 20/7/2015 and 15/2/15 applications for fixation of retail tariff, cross subsidy surcharge etc., were filed by EPDCL. On 3/2/2015 SPDCL filed application for fixation of retail tariff, cross subsidy surcharge etc. The first respondent has taken these two applications on file as OP.Nos. 1 and 2 of 2015. On 23/3/2015 the first respondent has passed detailed order. Thereafter the first respondent has taken on file OP.No.8 of 2015 [suo motu] for determining the cross subsidy surcharge payable by open access consumers and on 15/4/15 the first respondent determined the cross subsidy payable by this category of consumers and additional surcharge. The first respondent adopted the embedded cost

method/approach for determination of cross subsidy surcharge for financial year 2015-16. It is matter of record that the first respondent filed appeals before Hon'ble Supreme Court on the judgment dated 5/7/2007 in Appeal Nos. 169 to 172 of 2005 and OP.Nos. 248 and 249 of 2006 [sic Appeal Nos. 248 and 249 of 2006] and on 5/5/2008 the Apex Court passed the following interim order:

“until further orders operation of the impugned order in relation to the appellant shall remain stayed”

4. Learned counsel appearing for the parties placed on record the order dated 31/3/2016 in Civil Appeal Nos. 4936 to 4941 of 2007 dismissing the appeals filed by the first respondent. Having regard to the dismissal of appeals filed by the first respondent the issue of cross subsidy surcharge and additional surcharge is required to be considered and appropriate orders are passed by the first respondent. Prima facie, this Court is of the view that

the order impugned in the writ petitions was passed by following methodology embedded methodology system.

Since the Civil Appeals filed by the first respondent on the very same principle are dismissed by the Apex Court it is in fitness of things that the Commission hears and passes orders on cross subsidy and additional surcharge payable by the open access consumers in accordance with law.

Having regard to the dismissal of appeals filed by first respondent, the learned counsel submits that the issue can be reconsidered by first respondent, instead of this Court examining merits. Therefore, order in OP.No. 8 of 2015 [suo motu] is set aside on this short ground and the matter remitted to first respondent for disposal in accordance with law. The payments, if any, made by petitioners pursuant to interim order, it is needless to observe is subject to the final orders of the first respondent and depending upon the outcome of such determination the petitioners are given liberty to ask for

appropriate reliefs from SPDCL/EPDCL.

5. Writ Petitions are ordered as indicated above. No costs.

6. As a sequel, miscellaneous petitions if any, pending in these writ petitions shall stand closed.

JUSTICE S.V. B H A T T

27/04/2016
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